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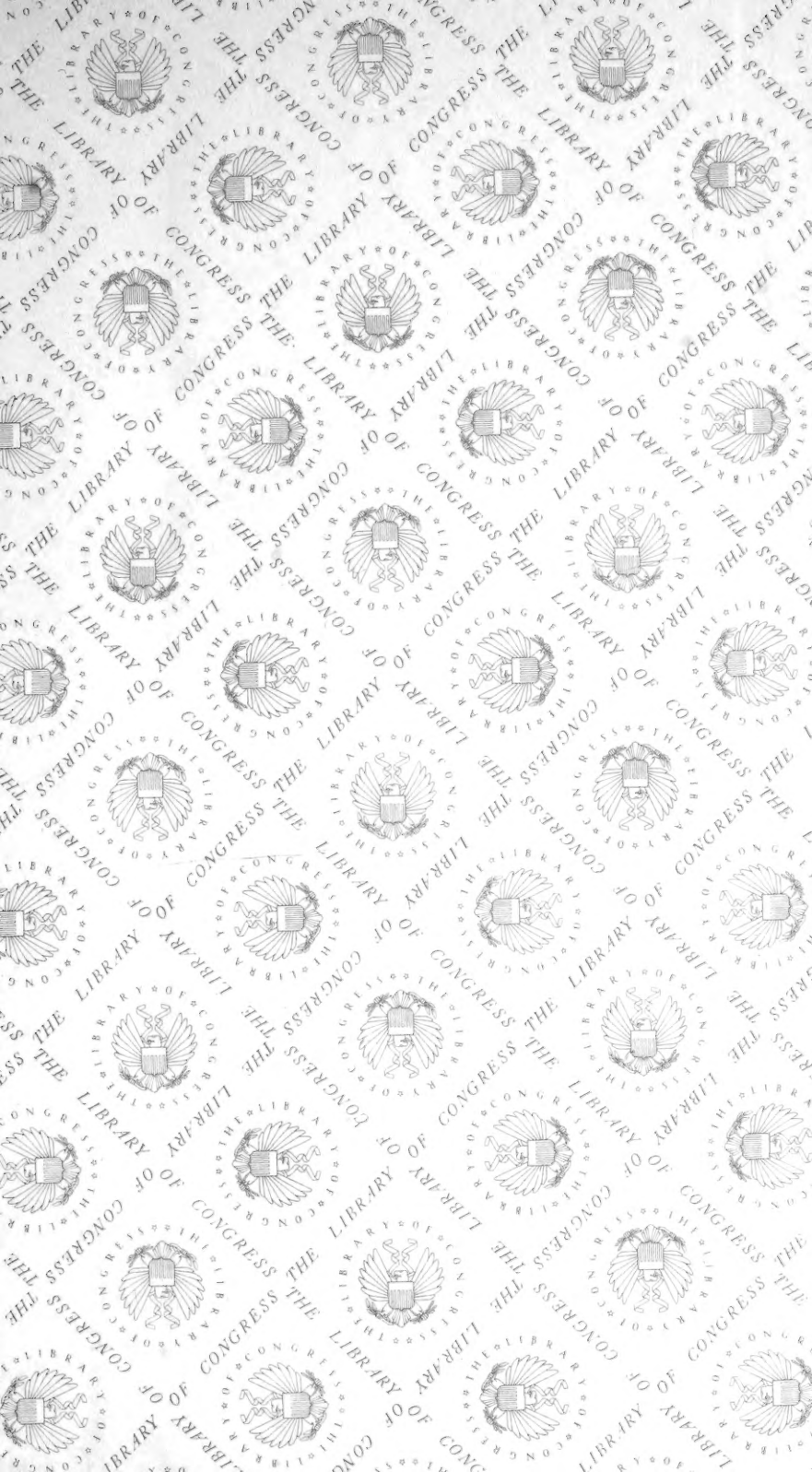
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THE

DUPLICATE LETTERS,

THE

FISHERIES AND THE MISSISSIPPI.

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DOCUMENTS RELATING TO TRANSACTIONS

AT

THE NEGOTIATION OF GHENT.

Collected and Published

BY JOHN QUINCY ADAMS,

ONE OF THE COMMISSIONERS OF THE UNITED STATES

AT THAT NEGOTIATION.

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WASHINGTON:

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1822.

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ADVERTISEMENT.

To facilitate the comparison between the Original and Duplicate of Mr. Russell's Letter of 11*th February,* $\frac{1}{1}\frac{8}{8}\frac{1}{2}\frac{5}{2}$ *to Mr. Monroe, they are in this Collection printed in corresponding pages, with the variations between them numbered and printed in a brevier type. The passages in the Ghent Documents, particularly referred to in the subsequent discussion, are enclosed in brackets.*

INTRODUCTION.

During the progress, and after the conclusion, of the negotiation at Ghent, despatches were at three several periods received by the executive government of the United States, from their plenipotentiaries at that place. The documents relating to the negotiation, transmitted by the first and second of these occasions, were communicated by messages from the President of the United States to Congress, and thereby became generally known to the public. They are to be found in the 9th volume of Wait's State Papers, and in the 7th volume of Niles' Register, and they contain the correspondence of the American mission, as well with their own government as with the British plenipotentiaries, from the commencement of the negotiation till the 31st of October, 1814. The third messenger brought the treaty of peace itself. The correspondence subsequent to the 31st of October, was of course communicated to the Senate with the treaty, when it was submitted to that body for their advice and consent to its ratification. But it was not communicated to Congress or made public, nor was there at that time manifested any desire to see it either by the House of Representatives or by the nation.

In the course of the last summer, (of 1821,) I was apprised by a friend, that rumours very unfavourable to my reputation, even for integrity, were industriously circulated in the Western Country. That it was said I had made a proposition at Ghent to grant to the British the right to navigate the Mississippi in return for the Newfoundland fisheries, and that this was represented as, at least, a high misdemeanor. I observed that a proposition to confirm both these rights as they had stood before the war, and as stipulated by the treaty of 1783, had been offered to the British plenipotentiaries, not by me, but by the whole American mission, every one of

whom had subscribed to it. That the proposal to make this offer had been made to the mission not by me, but by a citizen of the Western Country : that it was warranted, and as I believed, absolutely required by the instructions to the mission at the time when the proposal was made to the British commissioners, and that if I had felt and shown great solicitude at Ghent for the fisheries, I did not expect it was to be imputed to me as an offence, either in my character of a servant of the Union, or in that of a native citizen of Massachusetts. He said the proposal was at all events to be so represented, that it was charged exclusively upon me, and that I should hear more about it ere long.

On the 16th of January last, Mr. Floyd, a member of the House of Representatives of the United States, submitted to the House a resolution in the following words :

"*Resolved*, That the President of the United States be requested to cause to be laid before this House, all the correspondence which led to the treaty of Ghent, which has not yet been made public, and which, in his opinion, it may not be improper to disclose."

The said resolution was read, and ordered to lie on the table one day.

The proceedings of the House upon it the next day, are thus reported in the National Intelligencer of the 18th of January.

Thursday, January 17th, 1822.

HOUSE OF REPRESENTATIVES.

On motion of Mr. *Floyd*, the House proceeded to the consideration of the resolution offered by him yesterday, requesting of the President of the United States "all the correspondence which led to the treaty of Ghent, which has not yet been made public, *and which, in his opinion, it may not be improper to disclose.*"

Mr. *Floyd* remarked that, as peace was now restored, there was no reason why the whole of the correspondence which led to the treaty of peace, should not be made public. He therefore modified his motion by striking out the excepting clause, in *italic*, and inserting after the word "Ghent," the words, "*together with the protocol.*" He would also observe, that the bill which he had this day reported to the House, contemplated a very considerable change in our intercourse with the Indian tribes in the West, and it appeared, by the report of the Secretary of War, made yesterday, that a great influence was exercised over those tribes by our European neighbours in that quarter. The correspondence between the commissioners at Ghent embraced this subject, among others, and he thought it was desirable that the House should be in possession of the whole of it.

Mr. *Lowndes* presumed the House would have no objection to obtaining the information alluded to, if it were proper to make it public; but he thought it would be proper to leave the President, in the form of the request, the option of communicating such of the correspondence only as he might deem it not improper to disclose. This was the usual form adopted by the House, and, although peace had taken place, there might be some parts of the correspondence which it would be improper to publish. An unlimited call for all the information in the possession of the government on the subject, might create some embarrassment, and he hoped the mover of the resolution would restore it to its original shape.

Mr. *Floyd* was unwilling, by any act of his, to embarrass the executive; but presumed there was nothing asked for in this resolution which would have that effect, and feeling anxious to obtain all the information on his subject which could be furnished, he preferred the motion in its present form. If the motion would reach any state secret—admitting there ought to be any state secrets in this government—he wished not to be instrumental in disturbing it; but he anticipated no such consequence.

Mr. *Lowndes* rejoined, in substance, that although five or six years had elapsed since the restoration of peace, it did not follow that all that passed in the negotiations was proper for publication. Some parts of the correspondence it might be incompatible with the public interest to disclose to the world; at any rate it was proper to except such as the President might deem the public good required him to withhold. Mr. L. therefore moved to amend the resolution by restoring the words, "*and which, in his opinion, it may not be improper to disclose.*"

Mr. *Floyd* thought there was, in reality, no difference between himself and the gentleman from South Carolina. If the gentleman was apprised of any thing which it was improper to communicate to the House, to be sure that would be a different matter; but if his remarks were general, and had reference to no particular facts in the correspondence, there was no reason for the amendment.

The question being taken, the amendment was agreed to; and

Thus amended, the resolution was adopted, and a committee of two appointed to *carry it to the President.*

On this debate it was observable that the mover of the resolution had struck out the usual exception, which had been in his draft of it presented the day before, of such papers as in the President's opinion, it might be improper to disclose; and had added the words "*together with the protocol,*" which had not been in the original resolution. The words of exception were restored, after debate upon the motion of Mr. Lowndes. The inferences naturally drawn from these circumstances were, that in the day's inter-

val between the offering of the resolution, and the debate upon it, suggestions had been made to the mover, that there might be motives operating upon the executive, for withholding precisely the information that was desired, unless the whole should be demanded; and that a request for the *correspondence* would be liable to fail in drawing forth the momentous disclosure, unless the *protocol* should also be required. This special reference to the *protocol*, would more readily occur to a person who had been concerned in the negotiation, than to others, and the debate indicated at once some eagerness to obtain very complete information, some apprehensions that pains would be taken to suppress it, and some impression, that the evidence of the material fact to be elicited was lodged in the protocol.*

It was in the protocol of the conference of 1st December, 1814, that the proposal made to the British plenipotentiaries relating to the Mississippi and the fisheries was contained. But all the American plenipotentiaries had been present at that conference, and on the face of the protocol it appeared that the proposal had been made by them as a joint act of all. There was a subsequent letter from them of 14th December, 1814, to the British plenipotentiaries, signed by all, and referring to it as an article to which they had no objection, *considering it as merely declaratory.* There was nothing in the documents showing at whose instance in the American mission, the proposal had been offered; but in the joint letter of the mission to the Secretary of State of 25th December, 1814, it was stated that *a majority* of the mission had determined to offer it, and in a *separate* letter of the same date, Mr. Russell noticing this passage of the joint letter, acknowledged, *in candour*, that *he* had been on that occasion in the minority; and reserved to himself thereafter, the power of assigning his reasons to vindicate his motives. It will be seen in the course of the following papers, that the indication in the joint letter, that the offer had been made, upon a determination of *a majority*, had, by an alteration of the original draft been inserted, through the agency of Mr Russell, not (as he stated) at his own desire, but at that of Mr. Clay. But neither Mr. Clay, nor any other member of the mission, save Mr. Russell, had thought it necessary at the time to inform the government how he

* See in the Appendix, Mr. Floyd's Letter, published in the Richmond Enquirer of 27th August, 1822, and the remarks upon it.

had voted on the question, or to vindicate his motives for his vote.

When the documents called for by the resolution of the House of 17th January, 1822, were on the 23d of February communicated by the message from the President, they did indeed show that this portentous proposal had been made ; but that it was by the concurrent act of *all* the American plenipotentiaries. They also showed that upon the expediency of making the proposal, there had previously been taken a vote, on which occasion Mr. Russell had been in the minority. The documents were, by order of the House, laid upon the table, and there reposed for the space of nearly two months till the 18th of April.

In the mean time the correspondence from Washington, and the newspapers indoctrinated by it, had not been equally inactive. Through these channels, the public were assured that the proposal of offering the navigation of the Mississippi for the fisheries, had been made by me; that Mr. Clay had uniformly declared that he would not sign the treaty, with such an article in it; and that the proposal had been finally set aside, by Mr. Bayard's having changed his mind, and come over to the opinion of the minority. Not one of these three statements was true, though Mr. Russell has since positively asserted the second, and gone still further than the third, by alleging that the proposal was actually made by *a minority* of the mission, against the will of Mr. Bayard, and without giving him notice after he had changed his mind.

None of these allegations could derive any countenance from the documents communicated to the House, under their resolution of the 17th of January. But Mr. Russell's letter from Paris was in reserve. The following papers will show how it was finally brought before the House, together with a new edition of it in the form of a duplicate; and how a third exemplar, varying from both, was presented to the public, in the National Gazette at Philadelphia. The *duplicate* was the first of these papers seen by me, and from the moment of my perusing it, I could be no longer at a loss, for the origin of the storm, which a friendly voice had warned me was to burst upon me from the West. The letter was a tale wrought up with the ingenuity of a novelist, representing the proposition made to the British plenipotentiaries on the 1st of December, 1814, as a deliberate and wanton sacrifice of the peace and security of the whole Western and Southern section of the Union, for the doubtful

accommodation of a few Eastern fishermen, annually decreasing in number, entirely exempt from the danger, and unsupported by any claim of right. To take away all excuse from this procedure, it was represented as having been pursued by the majority, in wilful and express violation of the instructions to the mission, *as understood by themselves, and in defiance of the remonstrances of the minority;* Mr. Russell represented himself as having inflexibly opposed it to the last, and the whole purport of the letter tended to the impression that he had, in the deliberations of the mission at Ghent, opposed the measure by urging against it all the reasons which were set forth in the letter itself. There was withal, a profession of unfeigned respect for the integrity, talents, and judgment of the majority, thus represented as having grossly violated their own sense of their duties, and been prepared to lay open to British smugglers and emissaries, and to all the horrors of Indian warfare, the *unoffending* citizens of the largest portion of the Union.

No one member of the majority was specially named in Mr. Russell's letter, as peculiarly responsible for the obnoxious proposal, but the joint letter of the mission to the Secretary of State, of 25th December, 1814, had been drawn up by me. Mr. Russell, who had signed it without discussion, and without proposing any alteration to it, excepting those noticed in these papers, had, as appeared by this duplicate, taken it as the text for an adverse commentary. The joint letter, written the day after the signature of the treaty, to be despatched with it, had given to the Secretary of State, a concise and summary narrative of the proceedings of the mission since the 31st of October, 1814, the date of their last preceding despatch. In this narrative were mentioned the circumstances under which the proposal to the British plenipotentiaries of 1st December, 1814, had been made; the reasoning by which it had been discussed with them, the counter-proposition which they had offered as a substitute for it, and their final acceptance, in its stead, of the alternative which we had offered with it, of omitting altogether the article by which they would have abandoned their claim to the boundary line *to the Mississippi.* It was to the reasoning interwoven with this narrative, reasoning which had been used by the American mission in debate with the British plenipotentiaries, and as adversaries in argument to them, that I found Mr. Russell's duplicate was a deeply-studied, counter-argument. He had

undertaken, after the conclusion of the treaty, to do that for the enemy which they had not done for themselves ; but the glaring fallacy of his letter was, that it represented that which had been urged on our part in discussion with them, as if it had been a subject of debate among ourselves. It undertook to prove, that the principles which we had asserted, and the arguments we had urged to the British commissioners, in support of our fishing liberties, contested by them, were entirely without foundation ; that we had no right to the fishing liberties, and no right even to advance a claim to them ; and that these had been among his reasons for refusing his consent to the proposal of a stipulation for securing them. The duplicate,

"Tam ficti, pravique tenax, quam nuncia veri,"

blended with these misrepresentations, the objections which Mr. Clay had made, not only against the proposal which was offered, but against an article which never had been offered, and alleged as capping the climax of all Mr. Russell's reasons against the proposals, that it was in express violation of instructions which had been cancelled before the proposal was made.

Heterogeneous and incongruous as were these materials, they had obviously been mixed up with the design of exciting the resentment and indignation of the Western and Southern sections of the Union against the offer made to the British plenipotentiaries, and against those by whom it had been proposed. When the original letter from Paris was found, a comparison of it with the duplicate disclosed this design in still broader light. All the new paragraphs had a direct tendency either to aggravate the criminality and injustice of the majority, or to make special claims for the writer to Western favour and gratitude, or to deprecate by flattering compliments the resentments of the Eastern fishing interest. To any person unacquainted with the real transactions at the negotiation of Ghent, the composition was mingled with so much address and plausibility, that it was eminently calculated to produce its effect. It was difficult to suppose that the Ghent documents, and this letter in particular, had been called forth from their slumbers of seven years for any other purpose.

There were circumstances of a peculiar nature, imposing upon me the obligation of meeting this accusation at once, and in the most explicit manner. The documents called for by the House in

their first resolution of 17th January, were to be furnished from the Department of State ; and some mistrust had been discovered, that there would be a disposition there to withhold some of them. The second call, was for a paper known not to be forth-coming from thence, until it should be furnished by Mr. Russell himself; for which he had taken care to be prepared. Mr Russell, too, by observing, when he delivered it at the Department, that he was indifferent whether it should be communicated or not, but if not, that he wished it might be returned to him, evidently disclosed a supposition on his part, that I should feel reluctant at the communication of it to the House—that I should shrink from the exhibition of its contents to the world. My official duty was to report it to the President for communication to the House, and if precluded from the privilege of remarking upon it, I should have been reduced to the singular predicament of being made the silent reporter of my own condemnation. A deceased, and an absent colleague, were implicated in the charges of the letter, apparently as much as myself. Could I in justice to myself, I could not in duty to them, be the bearer of these imputations to the Legislative Assembly of the nation, without declaring them to be unfounded. I did, therefore, in reporting the paper to the President, request that in the communication of it to the House, it might be accompanied by my Remarks. The following pages will show the sequel.

In the collection of these papers, however, the defence and justification of myself and my colleagues of the majority, forms but a secondary purpose. Its primary intention is to prove—

1. That the principle assumed by the American mission at Ghent, at the proposal of *Mr. Clay*, and in a paragraph drawn up by him that the rights and liberties of the people of the United States in the North American fisheries, were *not* abrogated by the war of 1812, was a just and sound principle, entirely conformable to the law of nations.
2. That the article first offered by *Mr. Gallatin*, which was not proposed to the British plenipotentiaries, and the amendment to the 8th article of the project, also offered by Mr. Gallatin, which was actually proposed to the British plenipotentiaries, and by them rejected, was only a declaratory recognition of that same principle, applied to the British right of navigating the Mississippi, as well as to our fishery rights and liberties.

3. That, considered even on the narrow ground of conflicting sectional interests, this article and amendment proposed to place the East and the West in the same state as before the war; without gain to one or loss to the other.
4. That the objection, by the minority, against the article and amendment, insisted, in principle, upon the sacrifice of an Eastern for the benefit of a Western interest.
5. That the Eastern interest to be sacrificed, was of very great importance to the Union, and of vital magnitude to the State of Massachusetts; while the Western interest, for which it was to be immolated, was altogether speculative and imaginary. It was most truly denominated, by the member of the mission now no more, *bragging a million against a cent.*

If, therefore, the letter of Mr. Russell, of 11th February, 1815, from Paris, had been the real exposition of the motives of the minority, for objecting to the proposed article and amendment of Mr. Gallatin, its whole foundation, both of law and of fact, failing, would have left the minority without any justification for their votes whatsoever. With regard to the comparative *value* of the two interests in question, it was impossible for the minority with more sincere and deep conviction to believe the views of the majority to be erroneous, than the majority thought those of the minority to be so. But it never entered into my head, and never *could* have entered into my heart, to treasure up these errors of opinion for after-use against a colleague of the mission; to "set in a note-book, con, and learn by rote," opinions expressed in the mutual confidence of associates in a great national trust, in order to bring them forth, after many years, as engines to ruin a rival reputation.

But the letter from Paris was no exposition of the opinions which had been *manifested* by the minority at Ghent. The principle, that the fishing liberties had *not* been abrogated by the war, had been asserted by the mission at Ghent, on the proposal of Mr. Clay. The refutation of it is the most heavily laboured part of the letter from Paris. If individual opinions upon the expediency of particular measures adopted by the mission, are to be made the test of merit or demerit for individual members of the mission, it is not a little whimsical that Mr. Russell, for the minority, should now disclaim the principle adopted at the motion of one of them, and which has been completely successful in maintaining the interest in de-

fence of which it was advanced, and pin all their claims of superior service upon their ineffectual opposition to a proposal which they did actually concur in making, and which failed, not in consequence of their objections, but because the enemy disdained to accept it. If by the sturdiness of their adherence to their opinions, they had prevented the proposal from being made, there might have been some semblance of a claim to credit from those who tremble at the sight of an Englishman afloat upon the Mississippi. If the enemy had eagerly snatched at the offer, and British emissaries, British smugglers, and Indian wars, had swarmed upon us, in consequence, the minority might have had some apology, for disengaging their responsibility to the act, and casting upon their colleagues of the majority all its evil report. But so far as the proposal could possibly have operated mischief, they are answerable for it by their concurrence. So far as the immediate rejection of the proposal by a clear-sighted enemy, can test its possible consequences, the event affords as little cause for the minority to glory in their foresight, as their assent to what they thought so pernicious, gives them reason to be proud of their firmness. A loud call upon the nation to discriminate between the profound wisdom and comprehensive patriotism of the minority, and the dulness, absurdity, and contracted spirit, or treachery, of the majority, could scarcely rest on weaker grounds, than upon the aversion of the minority to principles which they nevertheless did sanction; and upon their arguments against measures to which they did subscribe their names. The majority have asked for no discrimination. As one of them, I have as little desire to conceal, as to proclaim, my separate agency in the transactions of the mission, or my vote upon any measure discussed by them. I ask, only, not to be misrepresented.

JOHN QUINCY ADAMS.

21st September, 1822.

CORRESPONDENCE WHICH LED TO THE TREATY OF GHENT.

Extract from the Journal of the House of Representatives of the United States.

JANUARY 16, 1822.

Mr. Floyd submitted the following resolution, viz:

Resolved, That the President of the United States be requested to cause to be laid before this House, all the correspondence which led to the Treaty of Ghent, which has not yet been made public, and which, in his opinion, it may not be improper to disclose.

The said resolution was read and ordered to lie on the table one day.

JANUARY 17, 1822.

On motion of Mr. Floyd,

The House proceeded to consider the resolution submitted by him yesterday, and the same being again read, and modified to read as follows:

Resolved, That the President of the United States be requested to cause to be laid before this House, all the correspondence which led to the Treaty of Ghent, together with the Protocol, which has not yet been made public.

Mr. Lowndes moved to amend the same, by subjoining the following, viz: "And which, in his opinion, it may not be improper to disclose."

And the question being taken thereon, it passed in the affirmative.

The said resolution, modified and amended as aforesaid, was then agreed to by the House; and Mr. Floyd and Mr. Walworth were appointed a committee to present the same to the President of the United States.

To the House of Representatives of the United States:

I transmit to the House of Representatives, a Report from the Secretary of State, with the Documents accompanying it, in pursuance of a resolution of the House of the 17th of January last.

JAMES MONROE.

Washington, 21st February, 1822.

Department of State,
Washington, 21st Feb. 1822.

The Secretary of State, to whom has been referred the resolution of the House of Representatives of the 17th January, requesting the President of the United States to cause to be laid before the House all the correspondence which led to the Treaty of Ghent, together with the Protocol, which has not been made public, and which, in his opinion, it may not be improper to disclose, has the honour to submit to the President the papers embraced by that resolution.

JOHN QUINCY ADAMS.

The President of the United States.

CORRESPONDENCE, &c.

American Note No. 6, in answer to British Note No. 6.

Ghent, November 10, 1814.

The undersigned have the honour to acknowledge the receipt of the note addressed to them by His Britannic Majesty's Plenipotentiaries, on the 31st ultimo.

The undersigned had considered an interchange of the project of a treaty as the course best calculated to exclude useless and delusory discussion, to confine the attention of both parties to the precise object to be adjusted between the two nations, and to hasten the conclusion of the peace so desirable to both. Finding, in the note of the British plenipotentiaries of the [21st] ultimo, a mere reference to the points proposed by them in the first conference, and the offer of assuming the basis of *uti possidetis*, on which the undersigned had in substance already declined to treat; they did not consider it as the project of a treaty presented in compliance with their request. They proposed, in their note of the 24th ultimo, that the exchange of the two projects should be made at the same time. And it is not without some surprise, that the undersigned observe, in the note to which they now have the honour of replying, that the British plenipotentiaries consider their note as containing the project of a treaty, to which the undersigned are supposed to be pledged to return a counter-project.

Believing that where both parties are sincerely desirous of bringing a negotiation to a happy termination, the advantage of giving or receiving the first draft is not of a magnitude to be made a subject of controversy, and convinced that their government is too sincerely desirous of that auspicious result to approve of its being delayed for a moment upon any question of etiquette, the undersigned have the honour to enclose herewith the project of a treaty, accompanied with some observations upon several of the articles, which may more fully elucidate their object in proposing them.

The British plenipotentiaries stated, in their last note, that they had no other propositions to offer, nor other demands to make, than those contained in their note of the 21st ultimo, which, with the reference to their former declaration respecting the fisheries, contains only two propositions, viz: that of fixing the boundary from the Lake of the Woods to the Mississippi; and that of adopting, with respect to the other boundaries, the basis of *uti possidetis*.

*[In answer to the declaration made by the British plenipotentiaries respecting the fisheries, the undersigned, referring to what passed in the conference of the 9th August, can only state that they are not authorized to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation

*Paragraph drawn by Mr. Clay, and inserted at his proposal.

thereto. From their nature, and from the peculiar character of the treaty of 1783, by which they were recognised, no further stipulation has been deemed necessary by the government of the United States, to entitle them to the full enjoyment of all of them.]

The undersigned have aready, in their last note, explicitly declined treating on the basis of *uti possidetis*. They cannot agree to any other principle than that of mutual restoration of territory, and have accordingly prepared an article founded on that basis. They are willing even to extend the same principle to the other objects in dispute between the two nations; and in proposing all the other articles included in this project, they wish to be distinctly understood, that they are ready to sign a treaty, placing the two countries, in respect to all the subjects of difference between the ... in the same state they were in at the commencement of the pres... war; reserving to each party all its rights, and leaving whatever may remain of controversy between them, for future and p... negotiation.

The British plenipotentiaries having, in their note of the ... September, communicated the disposition of their governm... receive favourably a proposition which should acknowle... boundary from the Lake of the Woods to the Mississippi, ... cuss any other line of boundary which might be submitted ... sideration, the undersigned answered, that as soon as the ... tion of Indian boundary should be disposed of, they would ... objection, with the explanation given by the British pleni... ries, to discuss the subject.

The government of the United States had, prior to the ... tion of Louisiana, been disposed to agree to the boundary ... Lake of the Woods to the Mississippi, from a wish not ... range that subject, but also to settle, in a definitive m... differences respecting the boundary and islands in the ... samaquoddy: and its assent to the proposed stipula... boundary was refused on account of the acquisition ... the boundaries of which might have been affected by ... dersigned cannot agree to fix the boundaries in that quarter ... that of Louisiana be also provided for in the ar...gement. They accordingly submit for consideration the article on that subject which appears to have been agreed on between the British and American commissioners in the project of convention of the year 1807.

In respect to the intended review of the other boundaries between the British and American territories, with the view to prevent future uncertainty and dispute, the undersigned propose the reference of the whole subject to commissioners: and they present accordingly five articles, drawn on the principles formerly adopted by the two powers for settling the question respecting the river St. Croix.

The article already agreed on, respecting the Indian pacification, is included in the project of the undersigned. In conformity with

their former suggestion, they offer another, intended to restrain the hostilities, and to prevent the employment, of the savages in war, and one reciprocally granting a general amnesty.

The only other subjects which have been presented by the undersigned as suitable for discussion, were those respecting seamen, blockade, and indemnities.

Keeping in view the declaration made by lord Castlereagh, in his note of the 29th of August, 1812, to Mr. Russell, and in his letter of the 4th November, 1813, to Mr. Monroe, the undersigned propose only a temporary article, intended, without affecting the rights or pretensions of either country, to attempt to accomplish, by means less liable to vexation, the object for which impressment has hitherto been thought necessary by Great Britain. The proposed agreement being purely conditional, and limited in duration, each party will be bound only so far, and so long, as the other shall fulfil its conditions; and at the end of the term fixed for the duration of the article, or whenever either party may fail to perform his engagement, the rights of both will be as valid and entire as they were before the agreement.

The article respecting blockades is believed to be in perfect conformity with the principles of the law of nations, as acknowledged by both nations. The definition is borrowed from the treaty of 1801, between Great Britain and Russia, and the residue of the article from the unratified treaty of 1806, between Great Britain and the United States.

That relating to indemnities, consists of two parts: the first for irregular seizures, captures, and condemnations of American property, contrary to the established laws and usages of nations, previous to the commencement of the war; and the second for similar irregularities committed during the war, and contrary to the known and established usages of war, between civilized nations. The cases of the first apply exclusively to claims of the citizens of the United States, because, the causes of such claims were then confined, by the relative situation of the parties, to one side. It is presumed, that the British government will itself be sensible of the justice of making indemnity for injuries committed by its officers, in violation of principles avowed and recognised by itself; particularly in the letter from lord Hawkesbury to Mr. King, of 11th April, 1801, and in that from Mr. Merry to Mr. Madison, of 12th April, 1804; and that the same justice will be admitted, in cases where the territorial jurisdiction of the United States was violated, and where the injury was occasioned by the retrospective effects of the British Orders in Council, of June, 1803, as to the return from the contraband voyages, and of the Orders in Council of January 7, 1807.

With regard to the Orders in Council, of November, 1807, and of April, 1809, the undersigned will observe, that these having been issued solely on the ground of retaliation against France, and their object having altogether ceased, it is just to indemnify the

citizens of the United States for losses experienced by the effect of measures intended to operate against the enemy of Great Britain, and which fell almost exclusively on a country, which was no party to the war. The United States have never ceased, and at this time continue to demand, from France, indemnity for the losses they have experienced by the effect of the decrees of her government, in violation of the law of nations.

The cases of the second part of this article apply equally to both the belligerent parties. They have been, during the war, subjects of crimination on both sides. The American government can give no stronger and more signal proof of its disapprobation of every departure, under colour of its authority, from the established usages of legitimate warfare between civilized nations, than by the offer of mutual reparation.

The article fixing a limitation for captures at sea, does not seem to require any comment.

The undersigned present their entire project in this specific form, with the full expectation of receiving from the British plenipotentiaries their explicit answer respecting all the articles embraced in it, and a project also reduced to specific propositions, and embracing all the objects which they intend to bring forward.

The undersigned renew to the British plenipotentiaries the assurance of their high consideration.

JOHN QUINCY ADAMS,
J. A. BAYARD,
HENRY CLAY,
JONATHAN RUSSELL,
ALBERT GALLATIN.

To the Plenipotentiaries of His Britannic Majesty, &c. &c. &c. Ghent.

Copy of a project of a treaty of peace submitted by the American to the British Plenipotentiaries at Ghent, on the 10th day of Nov. 1814.

Treaty of Peace and Amity between his Britannic Majesty and the United States of America.

His Britannic Majesty and the United States of America desirous of terminating the war which has unhappily subsisted between the two countries, and of restoring, upon principles of perfect reciprocity, peace, friendship, and good understanding, between them, have for that purpose, appointed their respective plenipotentiaries, that is to say: His Britannic Majesty on his part has appointed the right honourable James Lord Gambier, admiral of the White Squadron of his Majesty's fleet, Henry Goulburn, Esquire, a member of the Imperial Parliament and under Secretary of State, and William Adams, Esq. Doctor of Civil Laws; and the President of the Unit-

ed States, by and with the advice and consent of the Senate thereof, has appointed John Quincy Adams, James A. Bayard, Henry Clay, Jonathan Russell, and Albert Gallatin, citizens of the United States, who, after a reciprocal communication of their respective full powers, have agreed upon the following articles :

Article I. There shall be a firm and universal peace between his Britannic Majesty and the United States, and between their respective countries, territories, cities, towns, and people of every degree, without exception of persons or places. All hostilities both by sea and land shall immediately cease. All prisoners on both sides shall be set at liberty. All territory, places, and possessions, without exception, taken by either party from the other during the war, or which may be taken after the signing of this treaty, shall be restored without delay, and without causing any destruction, or carrying away any artillery or other public property, or any slaves or other private property ; and all archives, records, deeds, and papers, either of a public nature or belonging to private persons, which, in the course of the war, may have fallen into the hands of the officers of either party, shall be forthwith restored and delivered to the proper authorities and persons, to whom they respectively belong.

Article II. Immediately after the respective ratifications of this treaty, orders shall be sent to the armies, squadrons, officers, subjects, and citizens of the two powers, to cease from all hostilities. And to prevent all causes of complaint which might arise on account of the prizes which may be taken at sea after the signing of this treaty, it is reciprocally agreed that the vessels and effects which may be taken in the Channel and in the North Seas after the space of —— from that of the signature hereof, shall be restored on each side : that the term shall be —— from the Channel and the North Seas to the Canary Islands, inclusively, whether in the ocean or the Mediterranean : of —— from the said Canary Islands to the equinoctial line or equator, and of —— in all other parts of the world, without exception.

Article III. Whereas that portion of the boundary between the dominions of his Britannic Majesty in North America, and those of the United States, from the mouth of the river St. Croix, (as the said mouth was ascertained by the commissioners appointed for that purpose,) to the bay of Fundy, has not yet been regulated and determined ; and, whereas, the respective rights and claims of his Britannic Majesty and of the United States, to the several islands in the bay of Passamaquoddy, and to the island of Grand Menan, have never been finally adjusted and determined, the said islands being claimed on the part of the United States as lying within twenty leagues of their shores, and south of a line drawn due east from the mouth of the river St. Croix ; and on the part of his Britannic Majesty, as having been, at or before the former treaty of peace, between the two boundaries within the limits of the province of Nova Scotia : In order, therefore, finally to decide these several ques-

tions, it is agreed that they shall be referred to three commissioners, to be appointed in the following manner, viz: one commissioner shall be appointed by his Britannic Majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof, and the said two commissioners, shall have power to choose a third; and if they cannot agree, they shall each propose one person, and of the two names so proposed, one shall be drawn by lot, in the presence of the two original commissioners, and the three commissioners so appointed, shall be sworn impartially to examine and decide the said questions according to such evidence as shall respectively be laid before them, on the part of the British government and the United States. The said commissmissioners shall meet at ——— and shall have power to adjourn to such other place or places as they shall think fit. The said commissioners, or a majority of them, shall, by a declaration under their hands and seals, determine the boundary aforesaid, from the mouth of the river St. Croix to the bay of Fundy; and decide to which of the two contracting parties the several islands aforesaid do respectively belong, in conformity with the true intent of the former treaty of peace. And both parties agree to consider such decision as final and conclusive.

Article IV. Whereas neither that point of the high-lands lying due north from the source of the river St. Croix, and designated in the former treaty of peace between the two powers, as the northwest angle of Nova Scotia, nor the northwesternmost head of Connecticut river, has yet been ascertained: And whereas that part of the boundary line between the dominions of the two powers, which extends from the source of the river St. Croix, directly north, to the above mentioned northwest angle of Nova Scotia; thence, along the said high lands, which divide those rivers, that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river; thence, down, along the middle of that river, to the forty-fifth degree of north lattitude; thence, by a line due west, on said latitude, until it strikes the river Iroquois, or Cataraguy, has not yet been surveyed; It is agreed, that, for these several purposes, three commissioners shall be appointed, sworn, (mutatis mutandis) and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article; the said commissioners shall meet at ———, and shall have power to adjourn to such other place or places as they shall think fit. The said commissioners, or a majority of them, shall have power to ascertain and determine the points above mentioned, in conformity with the provisions of the said treaty of peace, and shall cause the boundary aforesaid, from the source of the river St. Croix to the river Iroquois, or Cataraguy, to be surveyed and marked according to the said provisions. The said commissioners, or a majority of them, shall make a map of the said boundary, and annex to it a declaration, under their hands and seals, certifying it to be the true map of the

said boundary, and particularizing the latitude and longitude of the northwest angle of Nova Scotia; of the northwesternmost head of Connecticut river, and of such other points of the said boundary as they may deem proper; and both parties agree to consider such map and declaration as finally and conclusively fixing the said boundary.

Article V. Whereas, by the former treaty of peace, that portion of the boundary of the United States from the point where the forty-fifth degree of north latitude strikes the river Iroquois, or Cataraguy, to the lake Superior, was declared to be along the middle of said river, into lake Ontario, through the middle of said lake, until it strikes the communication by water between that lake and lake Erie; thence, along the middle of said communication, into lake Erie; through the middle of said lake until it arrives at the water communication into the lake Huron; thence, through the middle of said lake, to the water communication between that lake and lake Superior: And whereas doubts have arisen what was the middle of the said river, lakes, and water communications, and whether certain islands lying in the same were within the dominions of his Britannic Majesty or of the United States: In order, therefore, finally to decide these questions, they shall be referred to three commissioners, to be appointed, sworn, (mutatis mutandis) and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding articte. The said commissioners, shall meet, in the first instance, at ———, and shall have power to adjourn to such other place, or places, as they shall think fit. The said commissioners, or a majority of them, shall, by a declaration under their hands and seals, designate the boundary through the said river, lakes, and water communications, and decide to which of the two contracting parties the several islands lying within the said rivers, lakes, and water communications, do respectively belong, in conformity with the true intent of the former treaty of peace. And both parties agree to consider such decision as final and conclusive.

Article VI. It is further agreed, that the said last-mentioned commissioners, after they shall have executed the duties assigned to them in the preceding article, shall be, and they, or a majority of them, are hereby, authorized, upon their oaths, impartially to fix and determine, according to the true intent of the said former treaty of peace, that part of the boundary between the dominions of the two powers which extends from the water communication between lake Huron and lake Superior, to the most northwestern point of the Lake of the Woods; to decide to which of the two parties the several islands lying in the lakes, water communications, and rivers, forming the said boundary, do respectively belong, in conformity with the true intent of the said former treaty of peace, and to cause such parts of the said boundary as require it to be surveyed and marked. The said commissioners, or a majority of them, shall, by a declaration, under their hands and seals, designate the boundary

aforesaid, state their decision on the questions thus referred to them, and particularize the latitude and longitude of the most northwestern point of the Lake of the Woods, and of such other points of the said boundary as they may deem proper. And both parties agree to consider such decision as final and conclusive.

Article VII. The several boards of commissioners mentioned in the four preceding articles shall, respectively, have power to appoint a secretary, and to employ such surveyors, or other persons, as they shall judge necessary. Duplicates of their respective declarations and decisions, of the statement of their accounts, and of the journal of their proceedings, shall be delivered by them to the agents of his Britannic Majesty, and to the agents of the United States, who may be respectively appointed, and authorized to manage the business in behalf of their respective governments. The said commissioners shall be respectively paid in such manner as shall be agreed between the two parties; such agreement being to be settled at the time of the exchange of the ratifications of this treaty. And all other expenses attending the said commissions shall be defrayed, jointly, by the two parties, the same being previously ascertained and allowed by a majority of the commissioners. And in the case of death, sickness, resignation, or necessary absence, the place of every such commissioner, respectively, shall be supplied in the same manner as such commissioner was first appointed, and the new commissioner shall take the same oath or affirmation, and do the same duties.

It is further agreed between the two parties, that, in case any of the islands mentioned in any of the preceding articles, which were in the possession of one of the parties prior to the commencement of the present war between the two countries, should, by the decision of any of the boards of commissioners aforesaid, fall within the dominions of the other party, all grants of lands made previous to that time, by the party having had such possession, shall be as valid as if such island or islands had, by such decision or decisions, been adjudged to be within the dominions of the party having had such possession.

Article VIII. It is agreed that a line, drawn due north or south, (as the case may be) from the most northwestern point of the Lake of the Woods, until it shall intersect the forty-ninth parallel of north latitude, and from the point of such intersection, due west, along and with the said parallel, shall be the dividing line between his majesty's territories and those of the United States to the westward of the said lake, as far as their said respective territories extend in that quarter; and that the said line shall, to that extent, form the southern boundary of his majesty's said territories, and the northern boundary of the said territories of the United States: Provided, that nothing in the present article shall be construed to extend to the northwest coast of America, or to the territories belonging to, or claimed by, either party, on the continent of America, to the westward of the Stony Mountains.

ARTICLE IX. The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war at the time of such ratification, and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges, which they may have enjoyed or been entitled to in 1811, previous to such hostilities.

Provided always, that such tribes or nations shall agree to desist from all hostilities against the United States of America, their citizens and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.

And his Britannic majesty engages on his part, to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom he may be at war at the time of such ratification, and forthwith to restore to such tribes, or nations, respectively, all the possessions, rights, and privileges, which they may have enjoyed or been entitled to in 1811, previous to such hostilities.

Provided always, that such tribes or nations shall agree to desist from all hostilities against his Britannic majesty and his subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.

ARTICLE X. His Britannic majesty and the United States shall, by all the means in their power, restrain the Indians living within their respective dominions from committing hostilities against the territory, citizens, or subjects, of the other party: and both powers also agree and mutually pledge themselves, if at any time war should unhappily break out between them, not to employ any Indians, nor to admit of their aid and co-operation in the prosecution of the war against the other party.

ARTICLE XI. Each party shall effectually exclude from its naval and commercial service all seamen, seafaring, or other persons, subjects or citizens of the other party, not naturalized by the respective governments of the two parties, before the —— day of ——; seamen or other persons, subjects of either party, who shall desert from public or private ships or vessels, shall, when found within the jurisdiction of the other party, be surrendered, provided they be demanded within —— from the time of their desertion.

No person whatever shall, upon the high seas, and without the jurisdiction of either party, be demanded or taken out of any ship or vessel, belonging to subjects or citizens of any of the parties, by the public or private armed ships or vessels belonging to, or in the service of, the other, unless such person be, at the time, in the actual employment of an enemy of such other party. This article shall continue in force for the term of —— years. Nothing in this article contained shall be construed thereafter to affect or impair the rights of either party.

ARTICLE XII. If either of the contracting parties shall hereafter be engaged in war against any third power, to which war the other of the parties shall remain neutral, it is agreed that every vessel of the neutral party, sailing for a port or place belonging to the enemy of the belligerent, without knowing that the same is besieged, blockaded, or invested, may be turned away from such port or place, but shall not be detained, nor her cargo, if not contraband, be confiscated, unless, after such notice, she shall again attempt to enter: but she shall be permitted to go to any other port or place she may think proper; nor shall any vessel or goods of either party, that may have entered into such port or place before the same was besieged, blockaded, or invested by the other, and be found therein after the reduction or surrender of such place, be liable to confiscation, but shall be returned to the proprietors thereof: and, in order to determine what characterizes a blockaded port, that denomination is given only to a port where there is, by the disposition of the power which attacks it with ships, stationary, or sufficiently near, an evident danger in entering.

ARTICLE XIII. It is agreed that indemnity shall be made by his Britannic majesty to the citizens of the United States, for all losses and damages sustained by them during the late war between Great Britain and France, and prior to the commencement of the present war, by reason of irregular or illegal captures, seizures, or condemnations of vessels and other property, under colour of authority, contrary to the known and established rules of the law of nations. And it is also agreed, that indemnity shall be made by each of the contracting parties, to the subjects or citizens of the other party, for all losses and damages sustained subsequent to the commencement of the present war, by reason of the seizure or condemnation of the vessels or cargoes, belonging to the subjects or citizens of the one party, which, in the ordinary course of commerce, happened at the commencement of hostilities to be in the ports of the other party; and by reason of the destruction of unfortified towns, and the pillage or destruction of private property, and the enticement and carrying away of negroes, contrary to the known and established rules and usages of war between civilized nations.

It is agreed, that, for the purpose of determining the indemnities due by each contracting party, in conformity with the provisions of this article, commissioners shall be appointed in the following manner, viz: one commissioner shall be named by his Britannic majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof; and the said two commissioners shall agree in the choice of a third; or, if they cannot agree, they shall each propose one person, and of the two names so proposed, one shall be taken by lot, in the presence of the two original commissioners, and the three commissioners thus appointed, shall be sworn, and authorized and empowered, impartially, to examine into all such claims and complaints, and to determine the indemnities which may be justly due for the same.

The said commissioners shall meet at ——— and shall have power to adjourn to such other place, or places, as they shall think fit; they shall also have power to appoint a secretary, swear and examine witnesses, and have all assistance and facilities necessary to effect the object of their appointment.

The award of the said commissioners, or a majority of them, shall in all cases be final and conclusive, both as to the justice of the claim, and as to the amount of the sum to be paid to the claimant and claimants. And his Britannic majesty and the United States agree and undertake to cause the sums so awarded to be due by them, respectively, to be paid in specie, to such claimant and claimants without deduction, and at such place or places, time or times, as shall be awarded by the commissioners.

Article XIV. It is also agreed, that no person or persons, residing within the dominions of one of the parties, who may have taken part with the other party, in the war between Great Britain and the United States, shall, on that account, be prosecuted, molested, or annoyed, either in his person or property; and that all such persons disposed to remove into the dominions of the other party, shall be allowed the term of ——— months, freely to sell their property, of every nature and description whatsoever, and to remove accordingly.

Article XV. This treaty, when the same shall have been ratified on both sides, and the respective ratifications mutually exchanged, shall be binding on both parties, and the ratification shall be exchanged at ——— in the space of —— months from this day, or sooner, if possible.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty, and have thereunto affixed our seals,

Done at Ghent, the —— day of ——— one thousand eight hundred and fourteen.

British Note, No. 7.

The undersigned have had the honour to receive the note and project of a treaty of peace presented by the American plenipotentiaries on the 10th instant.

The undersigned are of opinion that the most convenient course for them to adopt will be to return this project with their marginal alterations and suggestions on the several articles of which it is composed. The existing differences between the two governments will thus be brought more immediately in view, and it is hoped that, by confining the discussions to one project, the negotiations may sooner be brought to a favourable conclusion. The first part of the 10th article appears to be unnecessary, and the stipulation contained in the whole of it altogether inadmissible. Though his majesty's government sincerely hopes that a renewal of the war between his majesty and the United States may be far distant, yet the undersigned cannot consent to enter into any engagement as to what shall be the conduct of their government, if such a war should unfortunately occur.

With respect to the 11th and 12th articles, his majesty's government has strongly manifested its sincere disposition to the speedy restoration of peace, by agreeing, under all the present circumstances, to conclude the treaty without any stipulation on the points to which these articles relate. No advantage can arise from entering into discussions, upon a successful result of which the American plenipotentiaries have stated, more than once, that they will not make the conclusion of the peace at all to depend.

With respect to the 13th article, the indemnifications proposed by it, as applied to the actual circumstances of the war, are so unprecedented and objectionable, that any further perseverance of the American plenipotentiaries in requiring them, is not anticipated by the undersigned: if, however, contrary to expectation, indemnifications of this kind should be required, all hope of bringing the nogotiations to a favourable issue must prove abortive. The undersigned are instructed explicitly to declare, that as their government makes no claim on account of losses sustained by British subjects arising out of a war declared by the United States, so neither can their government agree to make compensation for losses, sustained in such a war by the American people.

The undersigned are, however, willing to agree to a stipulation by which it shall be provided, that the courts of justice in each country shall be open to the just demands of the respective people, and that no obstruction be thrown in the way of their recovery of the rights, claims, or debts, of any kind respectively due or belonging to them.

With respect to the 14th article, the undersigned do not concur in the necessity for any such stipulation as is there proposed.

The undersigned think proper to add, that, with respect to particular alterations suggested by them in various articles of the project, they are ready to enter into such explanations as may be required of them, with the sincere desire of endeavouring to reconcile the pretensions brought forward on the part of their respective governments.

The undersigned have forborne to insist upon the basis of *uti possidetis*, to the advantage of which they consider their country fully entitled. But should this negotiation terminate in a way contrary to their hopes and just expectations, they must protest against any claim or demand being urged by the American government in any future negotiation, in consequence of the facilities which his majesty's government have now shown themselves willing to afford to the speedy restoration of peace.

The undersigned avail themselves of the present opportunity to renew to the plenipotentiaries of the United States the assurances of their high consideration.

GAMBIER,
HENRY GOULDBURN,
WILLIAM ADAMS.

Ghent, November 26th, 1814.

Project of a Treaty, as returned by the British to the American Plenipotentiaries, 26th November, 1814.

Treaty of Peace and Amity, between his Britannic Majesty, and the United States of America.

The following marginal remarks and alterations were made and proposed by the British plenipotentiaries.

Note. It is proposed to omit altogether the words that are underlined.

His Britannic majesty and the United States of America, desirous of terminating the war which has unhappily subsisted between the two countries, and of restoring, upon principles of perfect reciprocity, peace, friendship, and good understanding, between them, have, for that purpose, appointed their respective plenipotentiaries, that is to say, his Britannic majesty on his part has appointed the right honourable James lord Gambier, admiral of the White Squadron, of his majesty's fleet, Henry Goulburn, esq. a member of the Imperial Parliament, and under Secretary of State, and William Adams, esq. Doctor of Civil Laws; and the President of the United States, by and with advice and consent of the Senate thereof, has appointed John Quincy Adams, James A. Bayard, Henry Clay, Jonathan Russell, and Albert Gallatin, citizens of the United States, who, after a reciprocal communication of their respective full powers, have agreed upon the following articles.

ARTICLE I.

ARTICLE I. There shall be a firm and universal peace between his Britannic majesty and the United States and between their respective countries, territories, cities, towns, and people, of every degree, without exception of (1) persons *or places*. All hostilities, both by sea and land, shall *immediately* cease. (2) *All prisoners on both sides shall be set at liberty.** All territory, places, and possessions, without excep-

(1) places or

(2) after the exchange of the ratifications as herein after mentioned.

* It is thought more advisable

that the provision respecting prisoners of war, should be the subject of a separate article; the draft of an article on this subject is subjoined.

(1) belonging to
(2) and taken by
(3) of the
(4) originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty.

(5) as far as may be practicable.

ARTICLE II.

(6) shall have been exchanged,

(7) exchange of the ratifications

(8) the period of the exchange of the ratifications,

(9) the same term of —— for all parts of the Mediterranean.

tion, *taken by* (1) either party *from* (2) the other during the war, or which may be taken after the signing of this treaty, shall be restored without delay, and without causing any destruction, or carrying away any (3) artillery or other public property, or any slaves or other private property, (4) and all archives, records, deeds, and papers, either of a public nature or belonging to private persons, which, in the course of the war, may have fallen into the hands of the officers of either party, shall be (5) forthwith restored, and delivered to the proper authorities and persons to whom they respectively belong.

ARTICLE II. Immediately after the *respective* ratifications of this treaty, (6) orders shall be sent to the armies, squadrons, officers, subjects, and citizens, of the two powers, to cease from all hostilities: and to prevent all causes of complaint, which might arise on account of the prizes which may be taken at sea, after the (7) *signing* of this treaty, it is reciprocally agreed, that the vessels and effects which may be taken in the Channel, and in the North Seas, after the space of ——— from (8) *that of the signature* hereof, shall be restored on each side; that the term shall be ——— from the Channel and the North Seas to the Canary islands inclusively, (9) *whether in the ocean or the Mediterranean:* of ——— from the said Canary Islands to the equinoctial line or equator, and of ——— in all other parts of the world without exception.

ARTICLE III. Whereas it was stipulated by the second article in the treaty of peace of 1783, between his Britannic majesty and the United States of America, that the boundary of the United States should comprehend "all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall, respectively, touch the Bay of Fundy, and the Atlantic ocean, excepting such islands as now are, or heretofore have been, within the limits of Nova Scotia:" And whereas claims have been made by the government of the United States to certain islands in the Bay of Fundy, which said islands are claimed as belonging to his Britannic majesty, as having been at the time of, and previous to, the aforesaid treaty of 1783, within the limits of the province of Nova Scotia: In order, therefore, finally to decide upon these claims, it is agreed that they shall be referred to two commissioners, to be appointed in the following manner, viz. one commissioner shall be appointed by his Britannic majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof, and the said two commissioners, so appointed, shall be sworn impartially to examine and decide upon the said claims, according to such evidence as shall be laid before them on the part of his Britannic majesty and of the United States respective-

ARTICLE III. *Whereas, that portion of the boundary between the dominions of his Britannic majesty in North America, and those of the United States, from the mouth of the river St. Croix (as the said mouth was ascertained by the commissioners appointed for that purpose) to the Bay of Fundy, has not yet been regulated and determined: And whereas, the respective rights and claims of his Britannic Majesty and of the United States, to the several islands in the Bay of Passamaquoddy, and to the island of Grand Menan, have never been finally adjusted and determined, the said islands being claimed on the part of the United States as lying within twenty leagues of their shores, and south of a line drawn due east from the mouth of the river St. Croix, and on the part of his Britannic majesty, as having been, at or before the former treaty of peace, between the two countries, within the limits of the province of Nova Scotia: In order, therefore, finally to decide these several questions, it is agreed that they shall be referred to three commissioners, to be appointed in the following manner, viz. one commissioner shall be appointed by his Britannic majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof, and the said two commissioners shall have power to choose a third, and if they cannot agree they shall each propose one person, and of the two names, so proposed, one shall be drawn by lot, in the presence of the two original commissioners, and the three commissioners, so appointed, shall be sworn impartially to examine and*

ly. The said commissioners shall meet at ————, and shall have power to adjourn to such other place, or places, as they shall think fit. The said commissioners shall, by a declaration or report, under their hands and seals, decide to which of the two contracting parties the several islands aforesaid do respectively belong, in conformity with the true intent of the said treaty of peace of 1783: and if the said commissioners shall agree in their decision, both parties shall consider such decision as final and conclusive.

It is further agreed, that, in the event of the two commissioners differing upon all, or any, of the matters so referred to them, or in the event of both, or either of the said commissioners refusing, or declining, or wilfully omitting, to act as such, they shall make, jointly or separately, a report, or reports, as well to the government of his Britannic majesty as to that of the United States, stating, in detail, the points on which they differ, and the grounds upon which their respective opinions have been formed; or the grounds upon which they, or either of them, have so refused, declined, or omitted to act. And his Britannic majesty, and the government of the United States, hereby agree to refer the report, or reports, of the said commissioners, to some friendly sovereign or state, to be then named for that purpose, and who shall be requested to decide on the differences which may be stated in the said report, or reports, or upon the report of one commissioner, together with the

decide the said questions, according to such evidence as shall respectively be laid before them on the part of the British government, and of the United States. The said commissioners shall meet at ————, and shall have power to adjourn to such other place, or places, as they shall think fit. The said commissioners, or a majority of them, shall, by a declaration under their hands and seals, determine the boundary aforesaid from the mouth of the river St. Croix to the Bay of Fundy, and decide to which of the two contracting parties the several islands aforesaid do respectively belong, in conformity with the true intent of the former treaty of peace. And both parties agree to consider such decision as final and conclusive.

grounds upon which the other commissioner shall have so refused, declined, or omitted to act, as the case may be. And if the commissioner so refusing, declining, or omitting to act, shall also wilfully omit to state the grounds upon which he has so done in such manner that the said statement may be referred to such friendly sovereign or state, together with the report of such other commissioner, then such sovereign, or state, shall decide, ex parte, upon the said report alone. And his Britannic majesty, and the government of the United States, engage to consider the decision of such friendly sovereign or state, to be final and conclusive on all the matters so referred.

ARTICLE IV.

ARTICLE IV. Whereas, neither that point of the Highlands lying due north from the source of the river St. Croix, and designated in the former treaty of peace between the two powers as the northwest angle of Nova Scotia, nor the northwesternmost head of Connecticut river, has yet been ascertained; and whereas that part of the boundary line between the dominions of the two powers, which extends from the source of the river St. Croix directly north to the above mentioned northwest angle of Nova Scotia; thence, along the said Highlands, which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river; thence, down along the middle of that river to the forty-fifth degree of north latitude; thence, by a line due

west, on said latitude, until it strikes the river Iroquois, or Cataraguy, has not yet been surveyed. It is agreed that, for these several purposes *three* (1) commissioners shall be appointed, sworn, (*mutatis mutandis*) and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article.(2) The said commissioners shall meet at ———, and shall have power to adjourn to such other place or places as they shall think fit. The said commissioners, *or a majority of them*, shall have power to ascertain and determine the points abovementioned, in conformity with the provisions of the said treaty of peace, (3) and shall cause the boundary aforesaid, from the source of the river St. Croix to the river Iroquois, or Cataraguy, to be surveyed and marked according to the said provisions.

The said commissioners, *or a majority of them*, shall make a map of the said boundary, and annex to it a declaration, under their hands and seals, certifying it to be the true map of the said boundary, and particularizing the latitude and longitude of the northwest angle of Nova Scotia, of the northwesternmost head of Connecticut river, and of such other points of the said boundary as they may deem proper ; and both parties agree to consider such map and declaration as finally and conclusively fixing the said boundary.(4)

ARTICLE V. Whereas, by the former treaty of peace, that portion of the boundary of the United States, from the point where the forty-fifth degree of

(1) two.

(2) unless otherwise specified in the present article.

(3) of 1783.

(4) And, in the event of the said two commissioners differing, or both or either of them refusing, declining, or wilfully omitting to act, such reports, declarations, or statements, shall be made by them, or either of them; and such reference to a friendly sovereign or state shall be made, in all respects, as in the latter part of the third article is contained, and in as full a manner as if the same was herein repeated.

ARTICLE V.

north latitude strikes the river Iroquois, or Cataraguy, to the Lake Superior, was declared to be along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence, along the middle of said communication, into Lake Erie, through the middle of said lake until it arrives at the water communication into the Lake Huron; thence, through the middle of said lake, to the water communication between that lake and lake Superior: And whereas doubts have arisen what was the middle of the said river, lakes, and water communications, and whether certain islands, lying in the same, were within the dominions of his Britannic majesty, or of the United States: In order, therefore, finally to decide these *questions*,(1) they shall be referred to (2) *three* commissioners, to be appointed, sworn, (*mutatis mutandis*) and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article.(3) The said commissioners shall meet, in the first instance, at ———, and shall have power to adjourn to such other place or places as they shall think fit. The said commissioners, *or a majority of them*, shall, by a (4) declaration, under their hands and seals, designate the boundary through the said river, lakes, and water communications, and decide to which of the two contracting parties the several islands lying within the said rivers, lakes, and water communications, do respectively belong, in conformity with the

(1) doubts
(2) two.

(3) unless otherwise specified in this present article.

(4) report or

(1) said treaty of 1783.

(2) designation and

(3) And in the event of the said two commissioners differing, or both or either of them refusing, declining, or wilfully omitting to act, such reports, declarations, or statements, shall be made by them, or either of them; and such reference to a friendly sovereign or state shall be made, in all respects, as in the latter part of the third article is contained, and in as full a manner as if the same was herein repeated.

ARTICLE VI.

(4) two.

(5) of 1783.

(6) of 1783.

(7) report or.

true intent of the (1) *former treaty of peace;* and both parties agree to consider such (2) decision as final and conclusive.(3)

ARTICLE VI. It is further agreed, that the said (4) last mentioned commissioners, after they shall have executed the duties assigned to them in the preceding article, shall be, and they, *or a majority of them*, are hereby authorized, upon their oaths, impartially to fix and determine, according to the true intent of the said *former* treaty of peace, (5) that part of the boundary between the dominions of the two powers which extends from the water communication between Lake Huron and Lake Superior, to the most northwestern point of the Lake of the Woods; to decide to which of the two parties the several islands lying in the lakes, water communications, and rivers, forming the said boundary, do respectively belong, in conformity with the true intent of the said *former* treaty of peace, (6) and to cause such parts of the said boundary, as require it, to be surveyed and marked. The said commissioners, *or a majority of them*, shall, by a (7)*declaration*, under their hands

and seals, designate the boundary aforesaid, state their decision on the (1) *questions* thus referred to them, and particularize the latitude and longitude of the most northwestern point of the Lake of the Woods, and of such other (2) *points on* the said boundary, as they may deem proper ; and both parties agree to consider such (3) decision as final and conclusive.(4)

(1) points.

(2) parts of.

(3) designation and.

(4) And in the event of the said two commissioners differing, or both or either of them refusing, declining, or wilfully omitting to act, such, reports, declarations, or statements, shall be made by them, or either of them ; and such reference to a friendly sovereign or state shall be made in all respects as in the latter part of the third article is contained, and in as full a manner as if the same was herein repeated.

ARTICLE VII.

(5) two.

ARTICLE VII. The several boards of (5) commissioners mentioned in the four preceding articles, shall respectively have power to appoint a secretary, and to employ such surveyors, or other persons, as they shall judge necessary. Duplicates of (6) their respective (7) declarations (8) and decisions *of the statement* (9) of their accounts, and of the journal of their proceedings, shall be delivered by them to the agents of his Britannic majesty, and to the agents of the United States, who may be respectively appointed and authorized to manage the business in behalf of their respective governments. The said commissioners shall be respectively paid in such manner as shall be agreed between the two (10) parties, such agreement being to be

(6) all. (7) reports.
(8) statements.
(9) and.

(10) contracting.

settled at the time of the exchange of the ratifications of this treaty; and all other expenses attending the said commissions, shall be defrayed (1) *jointly* by the two parties; *the same being previously ascertained and allowed by the majority of the commissioners.* And in the case of death, sickness, resignation, or necessary absence, the place of every such commissioner, respectively, shall be supplied in the same manner as such commissioner was first appointed; and the new commissioner shall take the same oath, or affirmation, and do the same duties.

(1) equally.

It is further agreed between the two (2) parties, that, in case any of the islands mentioned in any of the preceding articles, which were in the possession of one of the parties, prior to the commencement of the present war between the two countries, should, by the decision of any of the boards of commissioners aforesaid, (4) fall within the dominions of the other party, all grants of lands made previous to that time, by the party having had such possession, shall be as valid, as if such island or islands had, by such decision or decisions, been adjudged to be within the dominions of the party having had such possession.

(2) contracting.

(3) or of the sovereign or state so referred to, as in many of the preceding articles contained.

ARTICLE VIII. It is agreed that a line, drawn due west, from the Lake of the Woods, along the 49th parallel of north latitude, shall be the line of demarcation between his Britannic majesty's territories and those of the United States, to the westward of the said Lake, so far as the territories of the United States extend in that quarter;

ARTICLE VIII. *It is agreed that a line, drawn due north or south, (as the case may be) from the most northwestern point of the Lake of the Woods, until it shall intersect the forty-ninth parallel of north latitude, and from the point of such intersection due west, along and with, the said parallel, shall be the dividing line between his majesty's ter-*

and the said line shall, to that extent, form the southern boundary of his Britannic Majesty's territories, and the northern boundary of the territories of the United States. It being always distinctly understood, that nothing in the present article shall be construed to extend to the Northwest Coast of America, or to territories belonging to, or claimed by, either party, on the continent of America, westward of the Stony Mountains. [And it is further agreed, the subjects of his Britannic majesty shall, at all times, have access from his Britannic majesty's territories, by land or inland navigation, into the aforesaid territories of the United States to the river Mississippi, with their goods, effects, and merchandise, and that his Britannic majesty's subjects shall have and enjoy the free navigation of the said river.]

ritories and those of the United States, to the westward of the said Lake, as far as their said respective territories extend in that quarter; and that the said line shall, to that extent, form the southern boundary of his Britannic majesty's said territories, and the northern boundary of the said territories of the United States: Provided, that nothing in the present article shall be construed to extend to the Northwest Coast of America, or to the territories belonging to, or claimed by, either party, on the continent of America, to the westward of the Stony Mountains.

ARTICLE IX.

Approved.

ARTICLE IX. The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war, at the time of such ratification, and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges, which they may have enjoyed, or been entitled to, in 1811, previous to such hostilities: Provided always, that such tribes or nations shall agree to desist from all hostilities against the United States of America, their citizens, and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly. And his Bri-

tannic majesty engages, on his part, to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom he may be at war, at the time of such ratification, and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges, which they may have enjoyed or been entitled to in 1811, previous to such hostilities: Provided always, that such tribes or nations shall agree to desist from all hostilities against his Britannic majesty and his subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.

ARTICLE X. Inadmissible.

ARTICLE X. His Britannic majesty and the United States shall, by all the means in their power, restrain the Indians living within their respective dominions from committing hostilities against the territory, citizens, or subjects, of the other party. And both powers also agree and mutually pledge themselves, if at any time war should unhappily break out between them, not to employ any Indians, nor to admit of their aid and cooperation in the prosecution of the war against the other party.

ARTICLE XI. Inadmissible.

ARTICLE XI. Each party shall effectually exclude from its naval and commercial service, all seamen, seafaring, or other persons, subjects or citizens of the other party, not naturalized by the respective governments of the two parties before the —— day of ——.

Seamen, or other persons, subjects of either party, who shall desert from public or private

ships or vessels, shall, when found within the jurisdiction of the other party, be surrendered, provided they be demanded within —— from the time of their desertion.

No person whatever shall, upon the high seas, and without the jurisdiction of either party, be demanded, or taken out of any ship or vessel belonging to subjects or citizens of any of the parties, by the public or private armed ships or vessels belonging to, or in the service of, the other, unless such person be, at the time, in the actual employment of an enemy of such other party.

This article shall continue in force for the term of —— years. Nothing in this article contained shall be construed thereafter to affect or impair the rights of either party.

ARTICLE XII. Inadmissible.

ARTICLE XII. If either of the contracting parties shall hereafter be engaged in a war against any third power, to which war the other of the parties shall remain neutral, it is agreed that every vessel of the neutral party sailing for a port or place belonging to the enemy of the belligerent, without knowing that the same is besieged, blockaded, or invested, may be turned away from such port or place, but shall not be detained, nor her cargo, if not contraband, be confiscated, unless, after such notice, she shall again attempt to enter; but she shall be permitted to go to any other port or place she may think proper. Nor shall any vessel or goods of either party, that may have entered into such port or place before the same was besieged, blockaded, or invested, by the other,

and be found therein after the reduction or surrender of such place, be liable to confiscation, but shall be restored to the proprietors thereof: and, in order to determine what characterizes a blockaded port, that denomination is given only to a port where there is, by the disposition of the power which attacks it with ships stationary or sufficiently near, an evident danger in entering.

ARTICLE XIII. Inadmissible.

ARTICLE XIII. It is agreed that indemnity shall be made by his Britannic majesty to the citizens of the United States, for all losses and damages sustained by them during the late war between Great Britain and France, and prior to the commencement of the present war, by reason of irregular or illegal captures, seizures, or condemnations of vessels and other property, under colour of authority, contrary to the known and established rules of the law of nations. And it is also agreed, that indemnity shall be made, by each of the contracting parties, to the subjects or citizens of the other party, for all losses and damage sustained subsequent to the commencement of the present war, by reason of the seizure or condemnation of the vessels or cargoes, belonging to the subjects or citizens of the other party, which, in the ordinary course of commerce, happened, at the commencement of hostilities, to be in the ports of the other party; and by reason of the destruction of unfortified towns, and the pillage or destruction of private property, and the enticement and carrying away of negroes, contrary to the known and established rules and usages

of war, between civilized nations.

It is agreed that, for the purpose of determining the indemnities due by each contracting party, in conformity with the provisions of this article, commissioners shall be appointed, in the following manner, viz: one commissioner shall be named by his Britannic majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof; and the said two commissioners shall agree in the choice of a third; or, if they cannot agree, they shall each propose one person, and of the two names so proposed, one shall be taken by lot, in the presence of the two original commissioners, and the three commissioners, thus appointed, shall be sworn and authorized and empowered, impartially, to examine into all such claims and complaints, and to determine the indemnities which may be justly due for the same.

The said commissioners shall meet at ——, and shall have power to adjourn to such other place or places as they shall think fit; they shall also have power to appoint a secretary, swear and examine witnesses, and have all assistance and facilities necessary to effect the object of their appointment.

The award of the said commissioners, or a majority of them, shall, in all cases, be final and conclusive, both as to the justice of the claim and as to the amount of the sum to be paid to the claimant and claimants; and his Britannic majesty and the United States agree and undertake to cause the sums so awarded to

be due by them, respectively, to be paid in specie, to such claimant and claimants, without deduction, and at such place or places, time or times, as shall be awarded by the commissioners.

ARTICLE XIV. Inadmissible.

ARTICLE XIV. It is also agreed, that no person or persons, residing within the dominions of one of the parties, who may have taken part with the other party in the war between Great Britain and the United States, shall, on that account, be prosecuted, molested, or annoyed, either in his person or property; and that all such persons disposed to remove into the dominions of the other party, shall be allowed the term of ——— months, freely to sell their property, of every nature and description whatsoever, and to remove accordingly.

ARTICLE XV.

ARTICLE XV. This treaty, when the same shall have been ratified on both sides, and the *respective* ratifications mutually exchanged, shall be binding on both parties, and the ratifications shall be exchanged at (1) —— in the space of —— months from this day, or sooner if *possible*. (2)

(1) Washington, with all practicable despatch.

(2) practicable.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty, and have thereunto affixed our seals.

Done at Ghent, the —— day of —— one thousand eight hundred and fourteen.

True copy of the project submitted by the American to the British ministers, and also of the marginal changes, propositions, and remarks, made by the latter on returning their answer to the American ministers' note, communicating said project of a treaty.

C. HUGHES, Jr.

Secretary American Mission extraordinary.

*Draft of article to be inserted immediately after article 2d of the American project.**

All prisoners of war taken on either side, as well by land as by sea, shall be restored as soon as practicable, after the ratifications of this treaty shall have been exchanged, on their paying the debts which they may have contracted during their captivity. The two contracting parties respectively engage to discharge, in specie, the advances which may have been made by the other, for the sustenance and maintenance of such prisoners.

American No. 7, in reply to British No. 7.

GHENT, 30th Nov. 1814.

The undersigned have had the honour to receive the note of the British plenipotentiaries of the 26th instant, together with their marginal alterations and suggestions, on the several articles of the project of a treaty of peace, proposed by the undersigned

The undersigned consent that the day of the exchange of ratifications be substituted to that of the signature of the treaty, as the time for the cessation of hostilities, and for regulating the periods after which prizes at sea shall be restored: it being understood that measures shall be adopted for a speedy exchange of ratifications, and that the periods in the second article shall be fixed in a manner corresponding with this alteration.

The undersigned will also agree to the new article respecting prisoners, and to the mode of reference proposed by the British plenipotentiaries in the third, fourth, fifth, sixth, and seventh articles, instead of that which had been proposed by the undersigned. But, in order to prevent delay, they will suggest that a time be fixed, within which the commissioners shall make their decisions and reports.

The undersigned will decline insisting upon the 10th, 12th, and 14th articles, and upon so much of the 13th article as relates to indemnities for losses and damages sustained subsequent to the commencement of the present war. They wish to discuss the cases of vessels and property, in port when war was declared or known; and have the honour to enclose a copy of the provision made in that respect by the United States. They will also waive the residue of that (the 13th) article, and the 11th article, it being understood that the rights of both powers on the subject of seamen, and the claims of the citizens and subjects of the two contracting parties, to indemnities for losses and damages sustained prior to the commencement of the war, shall not be affected, or impaired, by the omission in the treaty of any specific provision with respect to those two subjects.

* Proposed by the British ministers.

In forbearing to insist upon the discussion of subjects deeply involving interests important to their country, and upon which the undersigned view the proposals offered by them for consideration as founded on principles the most moderate and conciliatory, they give the strongest evidence of the anxious wish of their government that the negotiation should be brought to a happy issue.

Sincerely participating in the desire expressed by the British plenipotentiaries, of endeavouring to reconcile the pretensions of both governments on the few subjects remaining for discussion, the undersigned have also assented to most of the alterations, proposed by the British plenipotentiaries, to those parts of the project which they have not entirely rejected. ☞ [To some of these alterations the undersigned are compelled by their duty to object. They have already stated, and now repeat, that, whilst requiring of Great Britain no sacrifice whatever, the government of the United States has not authorized the undersigned to agree to any stipulation involving any cession of the territory, or the dereliction of any of the essential rights of the people of the United States.

The objections of the undersigned are to one of the alterations suggested by the British plenipotentiaries in the first article; to some parts of the preamble of the third article; and to the eighth article;] and they have also some other verbal alterations to suggest. They request a conference, at such time and place as may suit the British plenipotentiaries, for the purpose of discussing those points, and of agreeing on the places and times left in blank in several of the articles.

The undersigned renew to the British plenipotentiaries the assurance of their high consideration.

JOHN QUINCY ADAMS,
J. A. BAYARD,
HENRY CLAY,
JONATHAN RUSSELL,
ALBERT GALLATIN.

To the Plenipotentiaries of his Britannic majesty, &c. &c. &c.

Extract of a law of the United States passed July 6th, 1812.

"Sec. 6. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized, to give, at any time, within six months after the passage of this act, passports for the safe transportation of any ship or other property belonging to British subjects, and which is now within the limits of the United States."

British Note No. 8.

The undersigned have the honour to acknowledge the receipt of the note addressed to them by the American plenipotentiaries,

and in compliance with their request for a conference, shall be happy to receive them at the Chartreux to-morrow at 12 o'clock.

The undersigned request the American plenipotentiaries to accept the assurance of their high consideration.

GAMBIER,
HENRY GOULBURN,
WILLIAM ADAMS.

GHENT, Nov. 30th, 1814.

Protocol of a conference, held the 1st December, 1814, at Ghent.

At a conference held this day, the American plenipotentiaries proposed the following alterations in their project, as amended by the British plenipotentiaries.

1. In article 1st, strike out the alteration consisting of the words "belonging to, and taken by," and preserve the original reading, viz. "taken by either party from the other."

This alteration was objected to by the British plenipotentiaries, and after some discussion, reserved by them for the consideration of their government.

2. Transpose alteration consisting of the words "originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty," after the words "public property."

Agreed to by the British plenipotentiaries.

3. Article 2d. The term to be fifteen days in the Channel, in the North Seas, in all parts of the Atlantic ocean to the equinoctial line or equator, and in all parts of the Mediterranean. Two months in the Atlantic ocean, to the latitude of the Cape of Good Hope, and three months in all other parts of the world.

In lieu of this alteration, the British plenipotentiaries proposed the following, viz. "That all vessels and effects which may be taken after the space of twelve days from the period of the exchange of the said ratifications, upon all parts of the coasts of North America, from the latitude of 23 deg. north, to the latitude of 47 deg. north and as far eastward in the Atlantic ocean as the 65 deg. of west longitude from the meridian of Greenwich, shall be restored on each side. That the term shall be thirty days in all other parts of the Atlantic ocean, as far eastward as the entrance of the British Channel, and southward as far as the equinoctial line or equator, and the same time for the Gulf of Mexico and all parts of the West Indies. Forty days for the British Channel and the North Seas. The same time for all parts of the Mediterranean, and one hundred and fifty days for all other parts of the world, without exception." Which was reserved by the American plenipotentiaries for consideration.

4. Article 3d. After the words "all islands within twenty leagues

of," insert "any part of" and substitute "points" for "point," after the words "to be drawn due east from the."

Agreed to by the British plenipotenitaries.

5. Article 3d. Strike out the words "whereas claims have been made by the government of the United States to certain islands in the Bay of Fundy," and insert, "whereas the severals islands in the Bay of Passamaquoddy, which is part of the Bay of Fundy, and the island of Grand Menan, in the said Bay of Fundy, are claimed by the United States, as being comprehended within the aforesaid boundaries."

Agreed to by the British plenipotentiaries.

6. Article 7th. In the alteration, consisting of the words "or of the sovereign or state so referred to as in many of the preceding articles contained," substitute "any" to "many."

Not insisted on; the British plenipotentiaries consenting to substitute the words "the four next" for the marginal words "many of the."

7. Articles 3, 4, 5, and 6. Provide that the decisions of the commissioners shall be made within a limited time.

Objected to by the British plenipotentiaries.

8. Article 8th. Substitute, after the words "to the westward of the said lake so far as," the words "their said respective territories," instead of the words "the territories of the United States."

Agreed to by the British plenipotentiaries.

☞[9. Article 8th. Strike out from the words "and it is further agreed," to the end.

Reserved by the British plenipotentiaries for the consideration of their government.

10. The American plenipotentiaries also proposed the following amendment to Article 8th, viz. "The inhabitants of the United States shall continue to enjoy the liberty to take, dry, and cure fish, in places within the exclusive jurisdiction of Great Britain, as secured by the former treaty of peace; and the navigation of the river Mississippi, within the exclusive jurisdiction of the United States, shall remain free and open to the subjects of Great Britain, in the manner secured by the said treaty; and it is further agreed, that the subjects of his Britannic majesty shall at all times have access, from such place as may be selected for that purpose, in his Britannic majesty's aforesaid territories, west, and within three hundred miles of the Lake of the Woods, in the aforesaid territories of the United States, to the river Mississippi, in order to enjoy the benefit of the navigation of that river, with their goods, effects, and merchandise, whose importation into the said States shall not be entirely prohibited, on the payment of the same duties as would be payable on the importation of the same into the Atlantic ports of the said States, and on conforming with the usual custom-house regulations."

This amendment was left with the British plenipotentiaries for consideration.

The American plenipotentiaries also intimated their willingness to omit Article 8th altogether, if that course should appear more advisable to the British plenipotentiaries.]

The American plenipotentiaries further proposed, in conformity with their note of November 30th, indemnifications for ships detained in British ports on the breaking out of the war, and afterwards condemned; which was resisted by the British plenipotentiaries.

After much discussion on this point, the conference was adjourned.

Protocol of Conference on December 10th, 1814.—Ghent.

The Protocol of the preceding conference, held on the 1st instant, was settled.

The British plenipotentiaries stated that their government could not consent to omit the words in article 1st, "belonging to either party and taken by the other," unless some modification should be introduced, either by excepting from mutual restitution all those territories which are made by any articles of the treaty the subject of reference to commissioners, or by excepting the Passamaquoddy Islands alone.

Received by the American plenipotentiaries for consideration.

☞[The British plenipotentiaries then stated, that with respect to the 8th article, their government offered, in lieu of the American proposals, to retain the amended article as far as the words "Stony Mountains," and to insert the following stipulation:

"His Britannic majesty agrees to enter into negotiation with the United States of America respecting the terms, conditions, and regulations, under which the inhabitants of the said United States shall have the liberty of taking fish on certain parts of the coast of Newfoundland, and other his Britannic majesty's dominions in North America, and of drying and curing fish in the unsettled bays, harbours, and creeks, of Nova Scotia, Magdalen Islands, and Labrador, as stipulated in the latter part of the 3d article of the treaty of 1783, in consideration of a fair equivalent, to be agreed upon between his majesty and the said United States, and granted by the said United States for such liberty aforesaid.

"The United States of America agree to enter into negotiation with his Britannic majesty respecting the terms, conditions, and regulations, under which the navigation of the river Mississippi, from its source to the ocean, as stipulated in the 8th article of the treaty of 1783, shall remain free and open to the subjects of Great Britain, in consideration of a fair equivalent, to be agreed upon between his majesty and the United States, and granted by his majesty."]

Received by the American plenipotiaries for consideration.

In the 7th article the British plenipotentiaries proposed, after the words "all grants of land made previous to," to omit the words

"to that time," and insert "previous to the commencement of the war;" so that the line would read "all grants of land made previous to the commencement of the war."

Agreed to.

The British plenipotentiaries proposed the insertion of the following article relative to the slave trade.

"Whereas the traffic in slaves is irreconcileable with the principles of humanity and justice, and whereas both his majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall exert every means in their power to accomplish so desirable an object."

Received for consideration.

The British plenipotentiaries proposed the following provision:

"That the citizens or subjects of each of the contracting parties may reciprocally sue in the courts of the other, and shall meet with no impediment to the recovery of all such estates, rights, properties, or securities, as may be due to them by the laws of the country in whose courts they shall sue."

Received for consideration.

The British plenipotentiaries proposed in the preamble to the project of the treaty to omit the words "Admiral of the White Squadron," and insert "late Admiral of the White, now Admiral of the Red," in lieu of them.

Agreed to.

The American plenipotentiaries stated that possibly doubts might arise as to the geographical accuracy of the words at the beginning of the 8th article—"a line drawn due west from the Lake of the Woods along the 49th parallel of north latitude."

It was agreed that an alteration should be made to guard against such possible inaccuracy.

The American plenipotentiaries proposed the following alteration in the draft delivered to them by the British plenipotentiaries, relative to the manner of filling up the blanks in article 2d: "Extend the term of 12 days to 50 degrees north latitude, and to the 36th west longitude; include the British and Irish channels in the term of 30 days; include the Baltic in the term of 40 days; instead of term of 150 days, insert 60 days for the Atlantic, as far as the latitude of the Cape of Good Hope; 90 days for every other part of the world south of the equator; 120 days for all other parts of the world."

The conference then ended.

Protocol of Conference on December 12th, 1814.

The Protocol of the preceding conference, held on the 10th instant, was settled.

☞[After much discussion relative to the 1st and 8th articles, the conference ended by the American plenipotentiaries undertaking to return an answer, in writing, to the propositions brought forward by the British plenipotentiaries, at the last conference.]

American Note, No. 8, written after the Conference of 12th of December, 1814.

Ghent, December 14th, 1814.

The undersigned, having considered the propositions offered, in the conference of the 10th instant, by the British plenipotentiaries, on the few subjects which remain to be adjusted, now have the honour of making the communication which they promised.

The first of them relates to the mutual restoration of the territory taken by either party from the other, during the war. In admitting this principle, which the undersigned had repeatedly declared to be the only one upon which they were authorized to treat, the British plenipotentiaries had, at first, proposed an alteration in the article offered by the undersigned, limiting the stipulation of restoring territory taken during the war, to territory belonging to the party from which it was taken. The objection of the undersigned to this alteration was, that a part of the territory thus taken being claimed by both parties, and made a subject of conference by the treaty, the alteration would leave it in the power of one party to judge whether any portion of territory taken by him during the war, did or did not belong to the other party, laying thereby, in the very instrument of pacification, the foundation of an immediate misunderstanding, the moment that instrument should be carried into execution.

The British plenipotentiaries have now proposed to omit the words originally offered by them, provided, that the Passamaquoddy Islands should alone be excepted from the mutual restitution of territory.

The consent of the undersigned to this solitary exception, if founded on the alleged right of Great Britain to those islands, might be construed as an implied admission of a better title on her part, than on that of the United States, and would necessarily affect their claim. The only ground for the exception consists in the allegation of the British plenipotentiaries that Great Britain had, during some period subsequent to the treaty of peace of 1783, exercised jurisdiction over those islands, and that the United States had subsequently occupied them, contrary to the remonstrances of the British government, and before the question of title had been adjusted.

Under these considerations, the undersigned, unwilling to prevent the conclusion of the treaty of peace, will take upon themselves the responsibility of agreeing to the exception proposed, with a provision, that the claim of the United States shall not, thereby, be in any manner affected. The undersigned have accordingly prepared a clause to that effect, and which provides, also, that the temporary possession may not be converted into permanent occupancy. They had agreed to the alteration proposed by the British plenipotentiaries in the mode of reference of the several boundaries and territory in dispute, under the expectation that the

proposed exception to a general restoration would not be insisted on, and they will add, that the objection to the temporary possession by Great Britain of the Passamaquoddy Islands, would be considerably lessened by adopting a mode of reference which would insure a speedy and certain decision.

[To the stipulation now proposed by the British plenipotentiaries as a substitute for the last paragraph of the 8th article, the undersigned cannot accede.

The proposition made, respecting the navigation of the Mississippi, in the alteration first proposed by the British plenipotentiaries to that article, was unexpected. In their note of the 31st of October, they had stated, that they had brought forward in their note of the 21st of the same month, all the propositions which they had to offer ; and that subject was not mentioned either in this last mentioned note, or in the first conference to which it referred. In order to obviate any difficulty arising from a presumed connection between that subject and that of the boundary proposed by the 8th article, the undersigned expressed their willingness to omit the article altogether. For the purpose of meeting what they believed to be the wishes of the British government, they proposed the insertion of an article which should recognise the right of Great Britain to the navigation of that river, and that of the United States to a liberty in certain fisheries, which the British government considered as abrogated by the war. To such an article, which they viewed as merely declaratory, the undersigned had no objection, and have offered to accede. They do not, however, want any new article on either of those subjects : they have offered to be silent with regard to both. To the stipulation now proposed, or to any other, abandoning, or implying the abandonment of, any right in the fisheries claimed by the United States, they cannot subscribe. As a stipulation merely, that the parties will hereafter negotiate concerning the subjects in question, it appears also unnecessary. Yet, to an engagement couched in general terms, so as to embrace all the subjects of difference not yet adjusted, or so expressed as to imply in no manner whatever an abandonment of any right claimed by the United States, the undersigned are ready to agree.]

Since neither of the two additional articles proposed by the British plenipotentiaries was included amongst, or is connected with, the subjects previously brought forward by them, it is presumed they are offered only for consideration, as embracing objects of common and equal interest to both parties. The undersigned will accede to the substance of the article to promote the abolition of the slave trade. They cannot admit the other article, which to them, appears unnecessary. The courts of the United States will, without it, be equally open to the claims of British subjects ; and they rely that, without it, the British courts will be equally open to the claims of the citizens of the United States.

The undersigned renew to the British plenipotentiaries the assurance of their high consideration.

JOHN QUINCY ADAMS,
JAMES A. BAYARD,
HENRY CLAY,
JONATHAN RUSSELL,
ALBERT GALLATIN.

To the Plenipotentiaries of his Britannic majesty, &c. &c. &c.

Such of the islands in the Bay of Passamaquoddy as are claimed by both parties, shall remain in the possession of the party in whose occupation they may be at the time of the exchange of the ratifications of this treaty, until the decision respecting the title to the said islands shall have been made, in conformity with the 4th article of this treaty. But if such decision shall not have taken place within ——— years after the exchange of the ratifications of this treaty, such islands shall be restored to, and until such decision may take place, shall be retained by, the party who had possession of the same at the commencement of the war. No disposition made by this treaty of the intermediate possession of the islands and territories, claimed by both parties, shall, in any manner whatever, be construed to affect the right of either.

British Note No. 10, *in answer to American No.* 8.

The undersigned have had the honour to receive the note of the American plenipotentiaries, dated on the 14th instant, stating their consent to except the Passamaquoddy Islands from the mutual restitution of territory captured during the war, provided the claim of the United States shall not be in any manner affected thereby. To the article proposed by the American plenipotentiaries, so far as it is adapted to this object, the undersigned are willing to agree ; but they object, as before intimated by them, to that part of the proposed article which would make it imperative on the commissioners to decide the question within any fixed time, trusting that on this head the American plenipotentiaries will be satisfied with their declaration, that it is the intention of his majesty's government to do all that belongs to them to obtain a decision without loss of time. The project of the article subjoined, will be found to omit the clause intended to enforce a decision within some limited time, and to contain a slight alteration in the third clause, by substituting in the place of the words " intermediate possession," the words, " as to such possession."

☞[So far as regards the substitution proposed by the undersigned, for the last clause of the 8th article, as it was offered solely with the hope of attaining the object of the amendment tendered by the American plenipotentiaries at the conference of the 1st instant, no

difficulty will be made in withdrawing it. The undersigned, referring to the declaration made by them at the conference of the 8th of August, that the privileges of fishing within the limits of the British sovereignty, and of using the British territories for purposes connected with the fisheries, were what Great Britain did not intend to grant without equivalent, are not desirous of introducing any article upon the subject. With the view of removing what they consider as the only objection to the immediate conclusion of the treaty, the undersigned agree to adopt the proposal made by the American plenipotentiaries, made at the conference of the 1st instant, and repeated in their last note, of omitting the 8th article altogether.]

The undersigned avail themselves of this opportunity to renew to the plenipotentiaries of the United States, the assurance of their high consideration.

GAMBIER,
HENRY GOULDBURN,
WILLIAM ADAMS.

Ghent, December 22, 1814.

Accompanying British Note No. 10.

Such of the islands in the Bay of Passamaquoddy as are claimed by both parties, shall remain in the possession of the party in whose occupation they may be at the time of the exchange of the ratifications of this treaty, until the decision respecting the title to the said islands shall have been made in conformity with the ——— article of this treaty.

No disposition made by this treaty, as to such possession of the islands and territories claimed by both parties, shall, in any manner whatever, be construed to affect the right of either.

Protocol of Conference.

Ghent, 23d December, 1814.

At a conference held this day, the protocol of the preceding conference was settled.

The American plenipotentiaries intimated their readiness to accede to the propositions contained in the note of the British plenipotentiaries, of the 22d instant.

The following alterations were then agreed to:

In the first article, after the word "cease," omit the words "after the exchange of the ratifications," and insert "as soon as the treaty shall have been ratified by both parties." Substitute the word "whatsoever" for the words "without exception." Restore the words "taken by either party from the other," in the room of the words "belonging to either party and taken by." After the words "signing of this treaty," insert the words "excepting only the islands hereinafter mentioned." After the words "respectively

belong," insert, verbatim, the words of the amendment inclosed in the note of the British plenipotentiaries of the 22d instant, filling up the blank with the word "fourth."

2d article. The second article was altered so as to read as follows:

ARTICLE II. Immediately after the ratification of this treaty by both parties, as hereinafter mentioned, orders shall be sent to the armies, squadrons, officers, subjects, and citizens, of the two powers, to cease from all hostilities; and to prevent all causes of complaint, which might arise on account of the prizes which may be taken at sea after the said ratifications of this treaty, it is reciprocally agreed, that all vessels and effects which may be taken after the space of twelve days from the said ratifications, upon all parts of the coast of North America, from the latitude of twenty-three degrees north to the latitude of fifty degrees north, and as far eastward in the Atlantic ocean as the thirty-sixth degree of west longitude from the meridian of Greenwich, shall be restored on each side; that the time shall be thirty days in all other parts of the Atlantic ocean north of the equinoctial line or equator; and the same time for the British and Irish Channels, for the Gulf of Mexico, and all parts of the West Indies; forty days for the North Seas, for the Baltic, and for all other parts of the Mediterranean; sixty days for the Atlantic ocean, south of the equator, as far as the latitude of the Cape of Good Hope; ninety days for every other part of the world south of the equator, and one hundred and twenty days for all other parts of the world without exception.

It was agreed that the article respecting prisoners of war should be the third article, and that the words "as hereinafter mentioned," should be substituted for the words, "shall have been exchanged."

The articles numbered in the original project 3, 4, 5, 6, 7, to be respectively numbered 4, 5, 6, 7, 8.

In the 4th article, it was agreed that the blank should be filled up with the words "St. Andrews, in the province of New-Brunswick."

In the 5th article, it was agreed that the blank should be filled up with the words "St. Andrews, in the province of New-Brunswick."

Near the end of the 5th article, substitute the word "fourth" for "third."

In the 6th article, it was agreed to fill up the blank with the words "Albany, in the State of New-York," and to substitute the word "fourth" for "third," in the concluding paragraph.

In the 7th article, substitute the word "fourth" for "third," in the last paragraph.

It was agreed that the article respecting the African slave trade should be the 10th article, and that the words "use their best endeavours," should be substituted for the words "exert every means in their power."

The 15th article of the project to be numbered 11; it was agreed to insert in it, after the words "on both sides," the words "without alteration by either of the contracting parties."

Omit the words "with all practicable despatch." Fill up the blank with the word "four." Insert after the word "done," the words "in triplicate." The British plenipotentiaries urged the article formerly proposed by them, as to suits of law to be prosecuted by the citizens or subjects of one nation in the courts of justice of the other. Resisted by the American plenipotentiaries.

The conference was adjourned to the 24th inst. for the purpose of signing the treaty.

The American Plenipotentiaries to the Secretary of State.

GHENT, 25th December, 1814.

SIR: We have the honour of transmitting herewith, one of the three copies of the treaty of peace between Great Britain and the United States, signed last evening by the plenipotentiaries of his Britannic majesty and by us.

The papers, of which copies are likewise now forwarded, will exhibit to you so fully the progress of the negotiation since the departure of the Chauncey, that few additional remarks from us will be necessary. It may be proper for us, however, to state, that in the interval between the time when our first project of a treaty was sent to the British plenipotentiaries, and that when they communicated to us the answer to it, the despatches which we had sent by Mr. Dallas, and the instructions to us, which had been published in the United States, were republished in England.

In declining to insist on the articles respecting impressment and indemnities, we made a formal declaration, that the rights of both parties, on the subject of seamen and the claims to indemnities for losses and damages sustained prior to the commencement of the war, should not be affected or impaired by the omission, in the treaty, of a specific provision on these two subjects.

From the time when the project of the treaty, presented by us, was returned, with the proposed alterations, it was apparent, that unless new pretensions on the part of Great Britain should be advanced, the only important differences remaining to be discussed, were those relating to the mutual restoration of territory, taken during the war; to the navigation of the Mississippi by British subjects, and to the right of the people of the United States to the fisheries within the British jurisdiction. Instead of a general restitution of captured territory, which we had proposed, the British government, at first, wished to confine it to the territory taken by either party belonging to the other. On our objecting, that this would make each party the judge, whether territory taken did or did not belong to the other, and thereby occasion new disputes,

they acknowledged it to be their object, that each party should, until a decision had taken place with respect to the title, retain possession of all the territory claimed by both parties, which might have been taken by such party during the war. They proposed, however, to limit the exception from mutual restitution, to the islands in the Bay of Passamaquoddy. As it had been, on both sides, admitted, that the title to these islands was disputed, and as the method of settling amicably those disputes was provided for in the treaty, we had not expected that the British government would adhere to the demand of retaining the temporary possession of those islands. We insisted, therefore, on their being included in the general restoration, until we had reason to believe that our further perseverance would have hazarded the conclusion of the peace itself; we finally consented, as an alternative preferable to the continuance of the war, to this exception, upon condition that it should not be understood as impairing, in any manner, the right of the United States to these islands. We also urged for a stipulation, requiring an ultimate decision upon the title within a limited time; but to this we also found opposed an insuperable objection, and we were finally induced to accept, in its stead, a declaration of the British plenipotentiaries that no unnecessary delay of the decision should be interposed on the part of Great Britain.

At the first conference on the 8th of August, the British plenipotentiaries had notified to us, that the British government did not intend, henceforth, to allow to the people of the United States, without an equivalent, the liberties to fish, and to dry and cure fish, within the exclusive British jurisdiction, stipulated in their favour, by the latter part of the third article of the treaty of peace of 1783. And, in their note of the 19th of August, the British plenipotentiaries had demanded a new stipulation to secure to British subjects the right of navigating the Mississippi: a demand, which, unless warranted by another article of that same treaty of 1783, we could not perceive that Great Britain had any colourable pretence for making. Our instructions had forbidden us to suffer our right to the fisheries to be brought into discussion, and had not authorized us to make any distinction in the several provisions of the third article of the treaty of 1783, or between that article and any other of the same treaty. We had no equivalent to offer for a new recognition of our right to any part of the fisheries, and we had no power to grant any equivalent which might be asked for it by the British government. We contended that the whole treaty of 1783, must be considered as one entire and permanent compact, not liable, like ordinary treaties, to be abrogated by a subsequent war between the parties to it; as an instrument recognising the rights and liberties enjoyed by the people of the United States as an independent nation, and containing the terms and conditions on which the two parts of one empire had mutually agreed thenceforth to constitute two distinct and separate nations. In consenting, by that treaty, that a part of the North American continent

should remain subject to the British jurisdiction, the people of the United States had reserved to themselves the liberty, which they had ever before enjoyed, of fishing upon that part of the coasts, and of drying and curing fish upon the shores; and this reservation had been agreed to by the other contracting party. We saw not why this liberty, then no new grant, but a mere recognition of a prior right, always enjoyed, should be forfeited by a war, any more than any other of the rights of our national independence, or why we should need a new stipulation for its enjoyment more than we needed a new article to declare that the king of Great Britain treated with us as free, sovereign, and independent states. We stated this principle, in general terms, to the British plenipotentiaries, in the note which we sent to them with our project of the treaty; and we alleged it as the ground upon which no new stipulation was deemed by our government necessary to secure to the people of the United States all the rights and liberties, stipulated in their favour, by the treaty of 1783. No reply to that part of our note was given by the British plenipotentiaries; but, in returning our project of a treaty, they added a clause to one of the articles, stipulating a right for British subjects to navigate the Mississippi. Without adverting to the ground of prior and immemorial usage, if the principle were just that the treaty of 1783, from its peculiar character, remained in force in all its parts, notwithstanding the war, no new stipulation was necessary to secure to the subjects of Great Britain the right of navigating the Mississippi, as far as that right was secured by the treaty of 1783; as, on the other hand, no stipulation was necessary to secure to the people of the United States the liberty to fish, and to dry and cure fish, within the exclusive jurisdiction of Great Britain. If they asked the navigation of the Mississippi as a new claim, they could not expect we should grant it without an equivalent: if they asked it because it had been granted in 1783, they must recognise the claim of the people of the United States to the liberty to fish and to dry and cure fish, in question. To place both points beyond all future controversy, a majority of us determined to offer to admit an article confirming both rights: or, we offered at the same time, to be silent in the treaty upon both, and to leave out altogether the article defining the boundary from the Lake of the Woods westward. They finally agreed to this last proposal, but not until they had proposed an article stipulating for a future negotiation for an equivalent to be given by Great Britain for the navigation of the Mississippi, and by the United States for the liberty as to the fisheries within the British jurisdiction. This article was unnecessary, with respect to its professed object, since both governments had it in their power, without it, to negotiate upon these subjects if they pleased. We rejected it, although its adoption would have secured the boundary of the 49th degree of latitude west of the Lake of the Woods, because it would have been a formal abandonment, on our part, of

our claim to the liberty as to the fisheries, recognised by the treaty of 1783.

You will perceive by the correspondence that the 9th article was offered us as a sine qua non and an ultimatum. We accepted it, not without much hesitation, as the only alternative to a rupture of the negotiation, and with a perfect understanding that our government was free to reject it, as we were not authorized to subscribe to it.

To guard against any accident which might happen in the transmission of a single copy of the treaty to the United States, the British plenipotentiaries have consented to execute it in triplicate: and as the treaty with the British ratification may be exposed to the same danger, the times for the cessation of hostilities, the restoration of captures at sea, and the release of prisoners, have been fixed, not from the exchange of ratifications, but from the ratification on both sides, without alteration by either of the contracting parties. We consented to the introduction of this latter provision, at the desire of the British plenipotentiaries, who were willing to take a full, but were unwilling to incur the risk of a partial ratification, as the period from which the peace should be considered as concluded.

We are informed by them that Mr. Baker, their secretary, is to go out to America with the British ratification.

We have the honour to be, very respectfully, sir, your most humble and obedient servants,

JOHN QUINCY ADAMS,
J. A. BAYARD,
HENRY CLAY,
JONATHAN RUSSELL,
ALBERT GALLATIN.

Extract of a letter from Jonathan Russell, esq. to the Secretary of State, dated Ghent, 25th December, 1814.

"My necessary occupation, at this moment, in aiding my colleagues to prepare our joint despatches, puts it out of my power to furnish you with any details or observations exclusively my own.

"As, however, you will perceive by our despatch to you of this date, that a majority only of the mission was in favour of offering to the British plenipotentiaries, an article confirming the British right to the navigation of the Mississippi, and ours to the liberty as to the fisheries, it becomes me, in candour, to acknowledge, that I was in the minority on that question. I must reserve to myself the power of communicating to you, hereafter, the reasons which influenced me to differ from a majority of my colleagues on that occasion; and if they be insufficient to support my opinion, I persuade myself they will, at least, vindicate my motives."

Mr. Gallatin to the Secretary of State.

Ghent, 25th December, 1814.

Sir: The treaty which we signed yesterday, with the British ministers, is, in my opinion, as favourable as could be expected, under existing circumstances, so far as they were known to us.—The attitude taken by the State of Massachusetts, and the appearances in some of the neighbouring States, had a most unfavourable effect. Of the probable result of the Congress at Vienna, we had no correct information. The views of all the European powers were precisely known, from day to day, to the British ministry. From neither of them did we, in any shape, receive any intimation of their intentions, of the general prospect of Europe, or of the interest they took in our contest with Great Britain. I have some reason to believe that all of them were desirous that it might continue. They did not intend to assist us; they appeared indifferent about our difficulties, but they rejoiced at any thing which might occupy, and eventually weaken our enemy. The manner in which the campaign has terminated; the evidence afforded, by its events, of our ability to resist, alone, the now very formidable military power of England; and our having been able, without any foreign assistance, and after she had made such an effort, to obtain peace on equal terms, will raise our character and consequence in Europe. This, joined with the naval victories, and the belief that we alone can fight the English on their element, will make us to be courted as much as we have been neglected by foreign governments. As to the *people* of Europe, public opinion was already most decidedly in our favour. I anticipate a settlement with Spain on our own terms, and the immediate chastisement of the Algerines. Permit me to suggest the propriety of despatching a squadron for that purpose, without losing a single moment.

I have little to add to our public despatch on the subject of the terms of the treaty. I really think, that there is nothing but nominal in the Indian article, as adopted. With respect to precedent, you will find two, though neither is altogether in point, viz. the —— article of the treaty of Utrecht, and the latter part of the —— article of our treaty with Spain. You know, that there was no alternative between breaking off the negotiations, and accepting the article; and that we accepted it, only as provisional, and subject to your approbation or rejection.

The exception of Moose Island, from the general restoration of territory, is the only point on which it is possible that we might have obtained an alteration, if we had adhered to our opposition to it. The British government had long fluctuated on the question of peace: a favourable account from Vienna, the report of some success in the Gulf of Mexico, or any other incident, might produce a change in their disposition; they had, already, after the question had been referred to them, declared that they could not consent to a relinquishment of that point. We thought it too ha-

zardous to risk the peace on the question of the temporary possession of that small island, since the question of title was fully reserved ; and it was, therefore, no cession of territory.

On the subject of the fisheries, within the jurisdiction of Great Britain, we have certainly done all that could be done. If, according to the construction of the treaty of 1783, which we assumed, the right was not abrogated by the war, it remains entire, since we most explicitly refused to renounce it, either directly or indirectly. In that case, it is only an unsettled subject of difference between the two countries. If the right must be considered as abrogated by the war, we cannot regain it without an equivalent. We had none to give but the recognition of their right to navigate the Mississippi, and we offered it. On this last supposition, this right is also lost to them ; and, in a general point of view, we have certainly lost nothing. But we have done all that was practicable in support of the right to those fisheries—1st, by the ground we assumed, respecting the construction of the treaty of 1783—2d, by the offer to recognise the British right to the navigation of the Mississippi—3dly, by refusing to accept from Great Britain both her implied renunciation of the right of that navigation, and the convenient boundary of 49 degrees, for the whole extent of our and her territories, west of the Lake of the Woods, rather than to make an implied renunciation, on our part, to the right of America to those particular fisheries.

I believe that Great Britain is very desirous of obtaining the northern part of Maine, say from about 47 degrees north latitude, to the northern extremity of that district, as claimed by us. They hope that the river, which empties into the Bay des Chaleurs, in the Gulf of St. Lawrence, has its source so far west as to intervene between the head waters of the river St. John's, and those of the streams emptying into the river St. Lawrence ; so that the line north from the source of the river St. Croix will first strike the heights of land which divide the waters emptying into the Atlantic Ocean (river St. John's) from those emptying into the *Gulf* of St. Lawrence, (river des Chaleurs,) and afterwards the heights of land which divide the waters emptying into the *Gulf* of St. Lawrence, (river des Chaleurs,) from those emptying into the river St. Lawrence ; but, that the said line never can, in the words of the treaty, strike any spot of land actually dividing the waters emptying into the Atlantic ocean, from those which fall into the *river* St. Lawrence. Such will be the foundation of their disputing our claim to the northern part of that territory ; but, feeling that it is not very solid, I am apt to think that they will be disposed to offer the whole of Passamaquoddy bay, and the disputed fisheries, as an equivalent for the portion of northern territory, which they want, in order to connect New-Brunswick and Quebec. This may account for their tenacity with respect to the temporary possession of Moose Island, and for their refusing to accept the recognition of their right to the navigation of the Mississippi, provided they recognise ours to the fisheries.

That northern territory is of no importance to us, and belongs to the United States, and not to Massachusetts, which has not the shadow of a claim to any land north of 45 degrees, to the eastward of the Penobscot river, as you may easily convince yourself of, by recurring to her charters.

I have the honour to be, with respect, &c.

ALBERT GALLATIN.

The Hon. the Secretary of State
of the United States, Washington.

Extract from the Journal of the House of Representatives of the United States.

APRIL 18, 1822.

Mr. Floyd submitted the following resolution, viz:

Resolved, That the President of the United States be requested to cause to be communicated to this House, if not injurious to the public good, any letter or communication which may have been received from Jonathan Russell, Esquire, one of the Ministers of the United States who concluded the Treaty of Ghent, after the signature of that Treaty, and which was written in conformity to the indications contained in said Minister's letter, dated at Ghent, 25th December, 1814.

The said resolution was read and ordered to lie on the table one day.

APRIL 19, 1822.

The resolution submitted by Mr. Floyd, on yesterday, was taken up, read, and agreed to by the House.

MESSAGE from the President of the United States, to the House of Representatives, of 4th May, 1822, in answer to their Resolution of 19th April, 1822.

To the House of Representatives of the United States:

In compliance with a resolution of the House of Representatives, of the 19th of April, requesting the President "to cause to be communicated to the House, if not injurious to the public interest, any letter which may have been received from Jonathan Russell, one of the Ministers who concluded the treaty of Ghent, in conformity with the indications contained in his letter of 25th of December, 1814," I have to state, that, having referred the resolution to the Secretary of State, and it appearing, by a report from him, that no such document had been deposited among the archives of the Department, I examined and found among my private papers a letter of that description, marked "private" by himself. I transmit a copy of the report of the Secretary of State, by which it appears that Mr. Russell, on being apprized that the document referred to by the resolution had not been deposited in the Department of State,

delivered there " a paper purporting to be the duplicate of a letter written by him from Paris, on the 11th of February, 1815, to the then Secretary of State, to be communicated to the House, as the letter called for by the resolution."

On the perusal of the document called for, I find that it communicates a difference of opinion between Mr. Russell and a majority of his colleagues, in certain transactions which occurred in the negotiations at Ghent, touching interests which have been since satisfactorily adjusted by treaty between the United States and Great Britain. The view which Mr. Russell presents of his own conduct, and that of his colleagues, in those transactions, will, it is presumed, call from the two surviving members of that mission, who differed from him, a reply, containing their view of those transactions, and of the conduct of the parties in them, and who, should his letter be communicated to the House of Representatives, will also claim that their reply should be communicated in like manner by the Executive—a claim which, on the principle of equal justice, could not be resisted. The Secretary of State, one of the Ministers referred to, has already expressed a desire that Mr. Russell's letter should be communicated, and that I would transmit, at the same time, a communication from him respecting it.

On full consideration of the subject, I have thought it would be improper for the Executive to communicate the letter called for, unless the House, on a knowledge of these circumstances, should desire it; in which case the document called for shall be communicated, accompanied by a report from the Secretary of State, as above suggested. I have directed a copy to be delivered to Mr. Russell, to be disposed of as he may think proper, and have caused the original to be deposited in the Department of State, with instruction to deliver a copy to any person who may be interested.

JAMES MONROE.

Washington, May 4th, 1822.

Department of State,
Washington, May 3, 1822.

The Secretary of State, to whom was referred the resolution of the House of Representatives of the 19th ultimo, requesting the President " to cause to be communicated to the House, if not injurious to the public good, any letter or communication which may have been received from Jonathan Russell, Esquire, one of the Ministers of the United States who concluded the treaty of Ghent, after the signature of that treaty, and which was written in conformity to the indications contained in said Minister's letter, dated at Ghent, 25th of December, 1814," has the honour of reporting to the President, that, until after the adoption of the said resolution by the House, there was upon the files of the Department of State, no letter from Mr. Russell, of the description mentioned therein;

but that Mr. Russell himself has since delivered at the Department, a communication purporting to be the duplicate of a letter written by him from Paris, on the 11th of February, 1815, to the then Secretary of State, to be communicated to the House, as the letter called for by their resolution.

A copy of this paper is herewith submitted to the President.

JOHN QUINCY ADAMS.

Extract from the Journal of the House of Representatives of the United States.

MAY 6th, 1822.

Mr. Fuller submitted the following resolution, to wit:

Resolved, That the President of the United States be requested to communicate to this House the letter of Jonathan Russell, esquire, referred to in his message of the 4th of May, instant; together with such communications as he may have received relative thereto, from any of the other ministers of the United States who negotiated the treaty of Ghent.

The said resolution was received by unanimous consent of the House, read, and ordered to lie on the table one day.

MAY 7th, 1822.

The House took up and proceeded to consider the resolution submitted by Mr. Fuller, yesterday, and the same being read,

Mr. McCarty moved that it lie on the table; which, being disagreed to.

The question was taken on agreeing to the resolution,

And passed in the affirmative.

Extract from the National Intelligencer of 13th June, 1822.

CONGRESSIONAL.

[It is one of the most vexatious incidents that has ever occurred to us, of lesser importance, that we mislaid our notes of the proceedings which took place in the House of Representatives on the 7th May last, on Mr. Fuller's motion, respecting Mr. Russell's letter, and on the bill authorizing the change of the site of the canal in this city, both of which debates we hoped to have published. We have the more reason to regret the circumstance, because a curiosity has been expressed to see what was said on Mr. Fuller's motion. A friend, who attended to what passed, has furnished us, from memory, with the following sketch of the proceedings on that occasion. It is brief, but is believed to be substantially correct.]

HOUSE OF REPRESENTATIVES—7th May, 1822.

Mr. Fuller's resolution, which was submitted yesterday, requesting the President to communicate the letter of Jonathan Russell, esq. relating to the treaty of Ghent, together with such communications as had been received from the other plenipotentiaries, or either of them, in explanation of the letter of Mr. R. was called up, and, on the question of its adoption—

Mr. Floyd said, he had moved the original resolution for the Ghent correspondence, with an expectation that it might throw some light on the importance of the Columbia river, and the bill before the House proposing an establishment there. As the President, however, had not thought proper to communicate the letter in question, when specially called for, he (Mr. F.) had moved to

have the message committed to a committee of which he was a member, but the motion had not prevailed. He had, however, hoped, since he had desisted from again requesting the letter, that no other gentleman would have proposed it. It was manifest that it had been withheld to prevent the excitement and ill blood which the contents might produce. He hoped the resolution would not be adopted.

Mr. Fuller said, he was happy to hear from the gentleman from Virginia, that he had been induced to abstain from a further, call for Mr. R's letter to prevent the excitement of "ill blood," and he would by no means be behind him, (Mr. Floyd,) in such a laudable intent; but, in his opinion, the communication of the letter, and of the explanation of the other commissioners, to Congress and to the public, would have a far greater tendency to allay the ill blood, if any existed, than the suppression of the *explanation*, while the letter was in effect made public. The President's message informed us, Mr. Fuller said, that he had transmitted the letter to the Department of State, and directed copies of it to be delivered to persons who should apply; consequently, it would soon reach the newspapers, while the comments or explanations which ought to accompany it would be effectually suppressed. Nothing, in his opinion, could be more unfair than thus to stifle all reply. It reminded him, he said, of what he had of late frequently witnessed in this House, when some bill was pending, and, before it was understood, one of its opposers would make a speech against it, and conclude with a motion *to lay it on the table*, which precluded all debate, and, consequently, all explanation. The indignation produced by such a course every gentleman must have observed and sometimes have felt. There was nothing so safe and honourable as a full disclosure of the statements of both sides. He regretted, he said, that his colleague, the writer of the letter, was not in his seat, as he was sure he could not object to the call, more especially as it appeared from the message, that the gentleman himself had furnished to the Department a duplicate or copy of that letter to be communicated to Congress before the original had been found. As to the suggestion that the Ghent correspondence or the letter in question could throw a single ray of light on the subject of the occupation of Columbia river, it was too improbable, Mr. Fuller said, to have ever entered his mind; but if the gentleman from Virginia (Mr. Floyd) had expected it at first, he could see no reason for his giving over the pursuit. He hoped the House would see the obvious justice of adopting the resolution.

Mr. Cocke said, he could see no reason for calling for the letter: the President had declined communicating it, and, therefore, he thought it not proper in the House to persist in the call.

Mr. Sergeant said, he rose to correct the error into which the gentleman from Tennessee (Mr. Cocke) had fallen, in supposing the President had "declined" communicating Mr Russell's letter. It appeared, on recurring to the message, (a part of which Mr. S.

read,) that he merely declined sending the letter, without also sending such answer or explanation as the majority of the commissioners who negotiated the treaty, or any of them, should request. On the other hand, the President signifies his willingness to communicate both together; and Mr. S. said, he could see no objection whatever to the resolution, which seemed, under existing circumstances, to ask no more than was due to the survivers of the commissioners, whose conduct was implicated, and who had a right to be heard.

Mr. Cocke, after hearing the message read, the terms of which, he said, he had not before so particularly attended to, withdrew his opposition.

Mr. Hardin said, he was glad the letter was called for, and he should vote for the resolution, as it would show the western people in what manner their interests were disregarded or sacrificed; that the commissioners offered to give up the navigation of the Mississippi to secure the fisheries of the east.

The resolution was then adopted with only one or two voices in the negative.

MESSAGE from the President of the United States, transmitting (pursuant to a resolution of the House of Representatives, of 7th May,) a Letter of Jonathan Russell, late one of the Plenipotentiaries of the United States, at the negotiation of Ghent, with Remarks thereon, by the Secretary of State.

To the House of Representatives:

In compliance with the resolution of the House of Representatives of the 7th of May, requesting the President of the United States "to communicate to that House the letter of Jonathan Russell, esq. referred to in his message of the 4th instant, together with such communications as he may have received relative thereto, from any of the other ministers of the United States who negotiated the treaty of Ghent," I herewith transmit a report from the Secretary of State, with the documents called for by that resolution.

JAMES MONROE.

Washington, May 7, 1822.

Department of State,
Washington, 7th May, 1822.

The Secretary of State has the honour of transmitting to the President of the United States his remarks upon the paper deposited at the Department of State on the 22d of last month, by Jonathan Russell, late one of the plenipotentiaries of the United States, at the negotiation of Ghent, to be communicated to the House of Representatives, as the letter called for by their resolution of the 19th of that month; and the Secretary of State respectfully requests that the President would transmit to the House of Representatives these Remarks, together with the above mentioned communication of Mr. Russell, on the renewal of the call therefor by the House.

JOHN QUINCY ADAMS.

Mr. Russell to the Secretary of State.

(PRIVATE.)

Paris, 11th February, 1815.

SIR: In conformity with the intimation contained in my letter of the (1) 25th of December, I (2) now have the honour to state to you the reasons which induced me to differ from a majority of my colleagues on the expediency of offering an article confirming the British right to the navigation of the Mississippi, and the right of the American people to take and cure fish in certain places within the British jurisdiction.

The (3) proposition of such an article appeared to be inconsistent with our reasoning to prove its absolute inutility. According to this reasoning no new stipulation was any more necessary, on the subject of such an article, than a new stipulation for the recognition of the sovereignty and independence of the United States.

The article proposed appeared also to be inconsistent with our instructions, as (4) interpreted by us, which forbid us to suffer (5) our right to the fisheries to be brought into discussion; for, it could not be believed that we were left free to (6) stipulate on a subject which we were restrained from (7) discussing, and that an (8) argument, and not an (9) agreement, was to be avoided. If our construction was indeed correct, it might not, perhaps, be difficult to show that we have not, in fact, completely refrained from the interdicted discussion.

At any rate, the proposal of the article in question was objectionable, inasmuch as it was incompatible with the principles asserted by a majority of the mission, and with the construction which (10) this majority had adopted on that part of our instructions which related to the fisheries. If the majority were correct in these principles, and in this construction, it became us to act accordingly; if they were (11) not correct, still it was unnecessary to add inconsistency to error.

I freely confess, however, that I did not accord with the majority, either in their view of the treaty of 1783, whence they derived their principles, or of our instructions; and that my great objection to proposing the article did not arise from an anxiety to reconcile our conduct with our reasoning and declarations.

* [DUPLICATE.]

Paris, 11th February, 1822.†

SIR: In conformity with the intimation contained in my letter of the (1) 25th December, I (2) have now the honour to state to you the reasons which induced me to differ from a majority of my colleagues on the expediency of offering an article confirming the British right to the navigation of the Mississippi, and the right of the American people to take and cure fish in certain places within the British jurisdiction.

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According to this reasoning, no new stipulation was any more necessary, on the subject of such an article, than a new stipulation for the recognition of the sovereignty and independence of the United States.

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At any rate, the proposal of the article in question was objectionable, inasmuch as it was incompatible with the principles asserted by a majority of the mission, and with the construction which (10) that majority had adopted on that part of our instructions which related to the fisheries. If the majority were correct in these principles, and in this construction, it became us to act accordingly. If they were (11) incorrect, still it was unnecessary to add inconsistency to error.

I freely confess, however, that I did not accord with the majority, either in their views of the treaty of 1783, whence they derived their principles, nor of our instructions; and that my great objection to proposing the article did not arise from an anxiety to reconcile our conduct with our reasoning and declarations.

* The word (Copy) had here been written by Mr. Russell, and erased. The traces of it are visible on the paper.

† *Note on the date of the Duplicate.* This was the date of the paper as delivered by Mr. Russell on the 22d of April, 1822, at the Department of State. It was afterwards altered to 1815, with his approbation, and before it was communicated to the House, as will be seen in the sequel.

I could not believe that the independence of the United States was derived from the treaty of 1783; that the recognition of that independence, by Great Britain, gave to this treaty any peculiar character, or that such character, supposing it existed, would necessarily render this treaty absolutely inseparable in its provisions, and make it one entire and indivisible whole, equally imperishable in all its parts, by any change which might occur in the relations between the contracting parties.

The independence of the United States rests upon those fundamental principles set forth and acted on by the American Congress, in the declaration of July, 1776, and not on any British (12) grant in the treaty of 1783, and its era is dated accordingly.

The treaty of 1783 was merely a (13) treaty of peace, and therefore subject to the same rules of construction as all other compacts of this nature. The recognition of the independence of the United States could not (14) well have given to it a peculiar character, and excepted it from the operation of these rules. Such a recognition, expressed or implied, is always indispensable on the part of every nation with whom we form any treaty (15) whatsoever. France, in the treaty of alliance, long before the year 1783, not only expressly recognised, but engaged (16) effectually to maintain, this independence; and yet this treaty, so far from being considered as possessing any mysterious peculiarity, by which its existence was perpetuated, has, even without war, and although a part of it contained words of (17) perpetuity, and was (18) unexecuted, long (19) since entirely terminated.

Had the recognition of our independence by Great Britain given to the treaty of 1783 any peculiar character, which it did not, (20) still that character could have properly extended to those provisions only (21) which affected that independence. All those general rights, for instance, of jurisdiction, which appertained to the United States, in their quality as a nation, might, so far as that treaty was declaratory of them, have been embraced by (22) such peculiarity, without (23) necessarily extending its influence to mere (24) special commercial liberties and (25) privileges, or to provisions (26) long since executed, not indispensably connected with national sovereignty, (27) or necessarily resulting from it.

The liberty to take and cure fish, within the exclusive (28) jurisdiction of (29) Great Britain, was certainly not necessary to perfect the (30) jurisdiction of the (31) United States; and there is no reason to believe that such a liberty was intended to be raised to an equality with the general right of fishing within the common jurisdiction of all nations, which accrued to us as a member of the great national family. On the contrary, the distinction between the special liberty and the general right appears to have been well understood by the American ministers who negotiated the treaty of 1783, and to have been clearly marked by the very import of the terms which they employed. It would evidently have been unwise in them, however ingenious it may be in us, to exalt such a privilege

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The liberty to take and cure fish within the exclusive (28) *jurisdiction* of (29) *Great Britain*, was certainly not necessary to perfect the (30) *jurisdiction* of the (31) *United States*. And there is no reason to believe that such a liberty was intended to be raised to an equality with the general right of fishing within the common jurisdiction of all nations, which accrued to us as a member of the great national family. On the contrary, the distinction between the special liberty and the general right, appears to have been well understood by the American ministers who negotiated the treaty of 1783, and to have been clearly marked by the very import of the terms which they employed. It would evidently have been unwise in them, however ingenious it may be in us, to exalt such a privilege

to the rank of a sovereign right, and thereby to have assumed the unnecessary and inconvenient obligation of considering such a liberty to be an indispensable condition of our national existence, and thus rendering that existence as precarious as the liberty itself. They could not have considered a privilege, which they expressly made to depend, to a very considerable extent, for its continuance, (32) on events and private interests, as partaking of the character and entitled to the duration of the inherent properties of sovereignty. The settlement of the shores might, at any time, have been effected by the policy of the British government, and would have made the assent of British subjects, under the influence of that policy, necessary to the continuance of a very considerable portion of that (33) liberty. They could not have meant thus to place, within the control of a foreign (34) government and its subjects, an (35) integral part, as we now affect to consider this privilege, of our national rights.

It is from this view of the subject that I have been constrained to believe that there was nothing in the treaty of 1783, which could, essentially, distinguish it from ordinary treaties, or rescue it, on account of any peculiarity of character, from the *jura belli*, or from the operation of those events on which the (36) continuation or termination of such treaties depends. I was, in like manner, compelled to believe, if any such peculiarity belonged to those provisions, in that treaty, which had an immediate connexion with our independence, that it did not necessarily affect the nature of the whole treaty, (37) or attach to a privilege which had no analogy to such provisions, or any relation to that independence.

I know not, indeed, any treaty, or any article of a treaty, whatever may have been the subject to which it related, or the terms in which it was expressed, that has survived a war between the parties, without being specially renewed, by reference or recital, in the succeeding treaty of peace. I cannot, indeed, (38) conceive of the possibility of such a treaty or such an article ; for, however clear and strong the stipulations for perpetuity might be, these stipulations themselves would follow the fate of ordinary unexecuted engagements, and require, after a war, the declared assent of the parties for their revival.

We appear, in fact, not to have had an unqualified confidence in our construction of the treaty of 1783, or to have been willing to rest exclusively on its peculiar character our title to any of the rights mentioned in it, and much less our title to the fishing (39) liberty in question. If hostilities could not affect that treaty, (40) or abrogate its provisions, why did we permit the boundaries assigned by it to be brought into discussion, or stipulate for a (41) restitution of all places taken from us during the present war ? If such (42) restitution was secured by the mere operation of the treaty of 1783, why did we discover any solicitude for the *status ante bellum*, and not resist the principle of *uti possidetis* on that ground ?

to the rank of a sovereign right, and thereby to have assumed the unnecessary and inconvenient obligation of considering such a liberty to be an indispensable condition of our national existence, and thus rendering that existence as precarious as the liberty itself. They could not have considered a privilege which they expressly made to depend, to a very considerable extent, for its continuance, (32) on mere events and private interests, as partaking of the character, and entitled to the duration, of the inherent properties of sovereignty. The settlement of the shores might, at any time, have been effected by the policy of the British government, and would have made the assent of British subjects under the influence of that policy, necessary to the continuance of a very considerable portion of that (33) privilege. They could not have meant thus to place within the control of a foreign (34) power and its subjects, an (35) *integral part*, as we now affect to consider this privilege, of our national rights.

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We appear, in fact, not to have an unqualified confidence in our construction of the treaty of 1783, or to have been willing to rest exclusively on its peculiar character our title to any of the rights mentioned in it; and much less our title to the fishing (39) privilege in question.

If hostilities could not affect that treaty, (40) nor abrogate its provisions, why did we permit the boundaries assigned by it, to be brought into discussion, or stipulate for a (41) restoration of all places taken from us during the present war? If such (42) a restitution was secured by the mere operation of the treaty of 1783, why did we discover any solicitude for the *status ante bellum*, and not resist the principle of *uti possidetis* on that ground.

With regard to the fishing privilege, we distinctly stated to you, in our letter of the (43) 21st of December, that, (44) "at the time of the treaty of 1783, it was (45) no new grant, we having always before that time enjoyed it," and thus endeavoured to derive our title to it from (46) prescription. A title, derived from immemorial usage, antecedent to 1783, could not well owe its origin or its validity (47) to a compact concluded at that time, and we (48) could, therefore, in this view of the subject, correctly say that this privilege (49) was no new grant; that is, that our right to the exercise of it was totally independent of such compact. If we were well-founded, however, in the assertion of our prescriptive title, it was quite (50) unnecessary to attempt to give a kind of charmed existence to the treaty of 1783, and to extend its (51) undefinable influence to every article of which it was composed, merely to preserve that title which we declared to be in no way derived from it, and which had existed, and, of course, could exist, without it.

It was rather unfortunate, too, for our argument against a severance of the provisions of that treaty, that we should have discovered ourselves, (52) a radical difference between them, making the fishing (53) privilege depend on immemorial usage, and, of course, distinct in its nature (54) and origin from the rights resulting from our independence.

We, indeed, throw some obscurity over this subject when we declare to you that this privilege was always enjoyed by us before the treaty of 1783, thence inferring that it was not granted by that treaty, and in the same sentence and from the same fact, appear also to infer, that it was not to be forfeited by war any more than (55) any other of the rights of our independence, making it thus one of (56) these rights, and of course, according to our doctrine, dependant on that treaty.

There might have been nothing incomprehensible in this mode of reasoning, had the treaty recognised this privilege to be derived from prescription, and confirmed it on that ground. The treaty has, however, not the slightest allusion to the past, in reference to this privilege, but regards it only with a view to the future. The treaty, (57) therefore, cannot be construed as supporting a pre-existing title, but as containing a grant entirely new. If we claim, therefore, under the treaty, we must renounce prescription, and if we claim from prescription, we can derive no aid from the treaty. If the treaty be imperishable in all its parts, the fishing privilege remains unimpaired without a recurrence to immemorial usage; and if our title to it be well-founded on immemorial usage, the treaty may perish without affecting it. To have endeavoured to support it on both grounds, implies that we had not entire confidence in either, and to have proposed a new article, indicates a distrust of both.

It is not, as I conceive, difficult to show that we (58) cannot, indeed, derive (59) a better title to this fishing privilege, from prescription, than from any indestructible quality of the treaty of 1783.

With regard to the fishing privilege, we distinctly stated to you, in our letter of the (43) 25th of December last, that (44) at the time of the treaty of 1783, it was (45) *no new grant*, we having always before that time enjoyed it, and thus endeavoured to derive our title to it from (46) *prescription;* a title derived from immemorial usage, antecedent to 1783, could not well owe its origin, or its validity, (47) to any compact, concluded at that time; and we (48) might, therefore, in this view of the subject, correctly say that this privilege (49) was then no new grant; that is, that our right to the exercise of it was totally independent of such compact. If we were well founded, however, in the assertion of our prescriptive title, it was quite (50) unnecessary for us to attempt to give a kind of charmed existence to the treaty of 1783, and to extend its (51) indefinable influence to every article of which it was composed, merely to preserve that title which we declared to be in no way derived from it, and which had existed, and, of course, could exist without it.

It was rather unfortunate, too, for our argument against the severance of the provisions of that treaty, that we should have discovered, ourselves, (52) such a radical difference between them, making the fishing (53) privilege to depend on the immemorial usage, and, of course, distinct, in its nature (54) and in its origin, from the rights resulting from our independence.

We indeed throw some obscurity over this subject, when we declare to you that this privilege was always enjoyed by us before the treaty of 1783; thence inferring that it was not granted by that treaty, and, in the same sentence, and from the same fact, appear also to infer that it was not to be forfeited by war, any more than (55) *any other of the rights of independence;* making it thus one of (56) those rights, and, of course, according to our doctrine, dependant on that treaty. There might have been nothing incomprehensible in this mode of reasoning, had the treaty recognised this privilege to be derived from prescription, and confirmed it on that ground. The treaty, however, has not the slightest allusion to the past, in reference to this privilege, but regards it only with a view to the future. The treaty (57) cannot, therefore, be construed as supporting a pre-existing title, but as containing a grant entirely new. If we claim, therefore, under the treaty, we must renounce prescription; and if we claim from prescription, we can derive no aid from the treaty. If the treaty be imperishable in all its parts, the fishing privilege remains unimpaired, without a recurrence to immemorial usage; and if our title to it be well founded on immemorial usage, the treaty may perish without affecting it. To have endeavoured to support it on both grounds, implies that we had not entire confidence in either, and to have proposed a new article indicates a distrust of both.

It is not, as I conceive, difficult to show that we (58) can, indeed, derive (59) no better title to this fishing privilege from prescription, than from any indestructible quality of the treaty of 1783.

Prescription (60) appears to me to be inapplicable to the (61) parties and to the (62) subject, and to be defective both in (63) fact and effect. As to the parties:—the immemorial enjoyment of a privilege within British jurisdiction, by British subjects, the inhabitants of British colonies, could not well be considered as evidence of a title to that privilege claimed (64) by the citizens of an independent republic, residing within the exclusive jurisdiction of that republic. The people of the United States, as such, could have claimed no special privilege within the dominions of any foreign power from immemorial usage, in 1783, when the longest duration of their own existence in that quality was little more, at the utmost, than the brief period of seven years, which is surely not beyond the memory of man, (*ultra memoriam hominis.*) The people of the United States had never, in fact, during that period, enjoyed the fishing privilege a moment; being effectually prevented therefrom by the existing state of hostilities. Nor could the inhabitants of the colonies, originally constituting the United States, even in their colonial condition, acquire against their sovereign any right from long usage (65) or mere lapse of time, (66) (nullum tempus regi occurrit.) The British sovereign was always competent to regulate (67) and restrain his colonies in their commerce and intercourse with each other, whenever and however he might think proper, and had he forbid his subjects in the province of (68) Massachusetts, to fish (69) and dry and cure fish in the bays, harbours, and creeks of Labrador, which, by the way, had (70) not immemorially belonged to him, it is not to be imagined that they would have conceived themselves discharged from the obligation of submitting, on account of any pretended right from immemorial usage. The fishing privilege, therefore, enjoyed by British subjects within British jurisdiction, could give no permanent and independent right to those subjects themselves and, (71) a fortiori, no such right to the citizens of the United States, claiming under a (72) different estate and in a different capacity. Great Britain might, indeed, as well prescribe for the prerogatives of her sovereignty over us, as we for any of the privileges which we enjoyed as her subjects.

I do not think it necessary to inquire how far the practice of the people of Massachusetts was the practice of (73) the whole original thirteen United States, or of the United States now, including Louisiana; or how far the immemorial usage of the people of Boston can establish a prescriptive right in the people of New-Orleans. I trust I have said enough to show that prescription is (74) inapplicable to the parties. It is also, I conceive, inapplicable to the subject.

Had the United States, as an independent nation, enjoyed, from time immemorial, the fishing privilege in question, still, from the nature of this privilege, no prescriptive right (75) could have thence been established. A right to fish, or to trade, or to do (76) any other act or thing within the exclusive jurisdiction of a foreign state, is a (77) simple power, a right (78) of mere ability, (*jus meræ facultatis,*) de-

Prescription (60) appears to be inapplicable to the (61) *parties*, and to the (62) *subject*, and to be defective both in (63) *fact* and *effect*.

As to the parties:—the immemorial enjoyment of a privilege, within British jurisdiction, by British subjects, the inhabitants of British colonies, could not well be considered as evidence of a title to that privilege, (64) claimed by citizens of an independent republic, residing within the exclusive jurisdiction of that republic. The people of the United States, as such, could have claimed no special privilege within the dominions of any foreign power, from immemorial usage, in 1783, when the longest duration of their own existence in that quality was little more, at the utmost, than the brief period of *seven* years, which is surely not beyond the memory of man, (*ultra memoriam hominis.*) The people of the United States had never, in fact, during that period, enjoyed the fishing privilege a moment, being effectually prevented therefrom by the existing state of hostilities. Nor could the inhabitants of the colonies, originally constituting the United States, even in their colonial condition, acquire against their sovereign any right from long usage, (65) or the mere lapse of time, (66) (*nullum tempus regi occurrit.*) The British sovereign was always competent to regulate (67) or to restrain them in their commerce and intercourse with each other, whenever and however he might think proper. And had he forbid his subjects, in the province of (68) Massachusetts Bay, to fish, (69) and to dry and cure fish, in the bays, harbours, and creeks, of Labrador, which, by the way, had (70) *not immemorially belonged to him*, it is not to be imagined that they would have conceived themselves discharged from the obligation of submitting, on account of any pretended right from immemorial usage.

The fishing privilege, therefore, enjoyed by British subjects, within British jurisdiction, could give no permanent and independent right to those subjects themselves, and, (71) *a fortiori*, no such right to the citizens of the United States, claiming, under a (72) *different estate*, and in a different capacity. Great Britain might, indeed, as well prescribe for the prerogatives of her sovereignty over us, as we for any of the privileges which we enjoyed as her subjects.

I do not think it necessary to inquire how far the practice of the people of Massachusetts was the practice of (73) the people of the whole original thirteen United States, or of the United States now, including Louisiana; or how far the immemorial usage of the people of Boston can establish a prescriptive right in the people of New-Orleans. I trust I have said enough to show that prescription is (74) *inapplicable to the parties.*

It is, also, I conceive, inapplicable to the subject. Had the United States, as an independent nation, enjoyed, from time immemorial, the fishing privilege in question, still, from the nature of this privilege, no prescriptive right (75) would have thence been established. A right to fish, or to trade, or to do (76) any other thing, within the exclusive jurisdiction of a foreign state, is a (77) *simple power*, a right (78) *of mere ability*, jus meræ facultatis, depend-

pending on the will of such state, (79) and is consequently imprescriptible. An independent (80*) title can be derived only from treaty.

I conceive, therefore, that (80) our claim to the fishing privilege, from immemorial usage, is not only unsupported by the (81) fact, but cannot, in (82) effect, result from such usage.

I have, (83) from this view of the subject, been led to conclude, that the treaty of 1783, in relation to the fishing liberty, is abrogated by the war; that this liberty is totally destitute of support from prescription; (84) and that we are, consequently, left without any title to it whatsoever. For, I cannot prevail upon myself to seek for such a title in the relative situation of the parties, at the time of negotiating the treaty of 1783, and contend, according to the insinuation contained in our letter to you of the (85) 21st of December, that the jurisdiction of Great Britain over the colonies, assigned to her in America, was a grant (86) from the United States, and that the United States, in making this grant, (87) reserved to themselves the privilege in question. Such a pretension, however lofty, is so inconsistent with (88) the circumstances of the case, and with any sober construction which can be given to that treaty, that I shall, I trust, be excused from seriously examining its validity.

Having thus stated some of the reasons which induced me to differ in opinion from a majority of my colleagues, relative to the character of the treaty of 1783, as well as with regard to every other foundation on which they were (89) disposed to rest our title to the fishing privilege, I shall now proceed to explain the (90) causes which influenced me to dissent from them in the interpretation of our (91) instructions.

These instructions forbid us to permit our (92) rights to the trade beyond the (93) Cape of Good Hope, to the fisheries, and to Louisiana, to be brought into discussion. I conceived that this prohibition extended to the general rights only, which affected our sovereignty, and resulted from it, and not (94) to mere special liberties and privileges which had no relation to that sovereignty, either as to its nature or extent.

The right (95) relating to the trade beyond the Cape of Good Hope, was the right which belonged to us as an independent (96) nation, in common with all other independent nations, and not the permission of trading to those parts of the East Indies which were within the exclusive jurisdiction of Great Britain. In like manner, the right to the fisheries, contemplated by our instructions, was, (97) I conceived, the right, common to all nations, to use the open sea for fishing as well as for navigation, and (98) not to the liberty to fish (99) and cure fish within the territorial limits of any foreign state. The right to Louisiana, (100) which was not to be brought into discussion, was the right to the empire and domain of that region, and (101) not to the right of excluding Great Britain from (102) the navigation of the Mississippi.

How far we conformed to this instruction, with regard to the general right to Louisiana, it is not necessary for me here to inquire;

ing on the will of such state, (79) and conseqently *imprescriptible.* An independent (80*) right can be derived only from treaty.

I conceive, therefore, that (80) a claim to the fishing privilege, from immemorial usage, is not only unsupported by the (81) *fact*, but cannot, in (82) *effect*, result from such usage.

I have, (83) in this view of the subject, been led to conclude that the treaty of 1783, in relation to the fishing liberty, is abrogated by the war, and that this liberty is totally destitute of support from prescription (84) and, consequently, that we are left without any title to it whatsoever. For, I cannot prevail upon myself to seek for such a title in the relative situation of the parties at the time of negotiating the treaty of 1783, and contend, according to the insinuation contained in our letter to you, of the (85) 25th of December last, that the jurisdiction of Great Britain over the colonies assigned to her, in America, was a grant (86) of the United States, and that the United States, in making this grant, (87) *reserved to themselves* the privilege in question. Such a pretension, however lofty, is so inconsistent with (88) the real circumstances of the case, and with any sober construction which can be given to that treaty, that I shall, I trust, be excused from seriously examining its validity.

Having thus stated some of the reasons which induced me to differ in opinion from a majority of my colleagues, relative to the character of the treaty of 1783, as well as with regard to every other foundation on which they were (89) disposed, inconsistently, to rest our title to the fishing privilege, I shall now proceed to explain the (90) reasons which influenced me to dissent from them in the interpretation of our (91) instructions relative to that privilege.

These instructions forbid us to permit our (92) *rights* to the *trade* beyond the (93) *Cape of Good Hope, to the fisheries, and to Louisiana*, to be brought into discussion. I conceived that this prohibition extended to the general rights only, which affected our sovereignty and resulted from it, and not (94) the special liberties and privileges which had no relation to that sovereignty, either as to its nature or extent.

The right, (95) relative to the trade beyond the Cape of Good Hope, was the right which belonged to us as an independent (96) nation, and not to the permission of trading to those parts of the East Indies which were within the exclusive jurisdiction of Great Britain. In like manner, the right to the fisheries, contemplated by our instructions, was, (97) I conceive, the right to use the open sea for fishing as well as for navigation, and (98) not the liberty to fish, (99) and to cure fish, within the territorial limits of any foreign state. The right to Louisiana, (100) which, by those instructions, were not to be brought into discussion, was the right to the empire and domain of that region, and (101) not the right of excluding Great Britain from (102) the free navigation of the Mississippi.

How far we conformed to this instruction, with regard to the general right to Louisiana, it is not necessary for me here to inquire:

but certainly the majority believed (103) themselves permitted to offer a very explicit proposition with regard to the navigation of its principal (104) river. I believed, with them, that we were so permitted, and that we were likewise permitted to offer a proposition relative to the fishing liberty, and had the occasion required it, to make proposals concerning the trade to the British East Indies. I was persuaded, that treating relative to these privileges, or discussing the obligation or expediency of granting or witholding them, respectively, violated in no way our instructions, or affected the general rights which we were forbidden to bring into discussion.

Considering, therefore, the fishing liberty to be entirely at an end, without a new stipulation for its revival, and believing that we were entirely free to discuss the terms and conditions of such a stipulation, I did not object to the article proposed by us because any article on the subject was unnecessary, or contrary to our instructions, but I objected specially to that article, because, by conceding (105) in it the free navigation of the Mississippi, (106) we offered, in my estimation, for the fishing privilege, a price much above its value.

In no view of the subject could I discover any (107) analogy between the two objects, and the only reason for connecting them and making them mutual equivalents for each other, appeared to be because they were both found in the treaty of 1783.

If that treaty was abrogated by the war, as I consider it to have been, any connexion between its parts must have ceased, and the liberty of navigating the Mississippi by British subjects must, at least, be completely at an end; for it will not, I trust, be attempted to continue it by a (108) prescriptive title, or to consider it as a (109) reservation, made by the United States, from any grant of sovereignty which, at the treaty of peace, they accorded to Great Britain. If, indeed, it was such a reservation, it must have been intended for (110) our benefit, and, of (111) course, could be no equivalent for the fishing (112) privilege. If it is considered as a reservation made by Great Britain, it will reverse (113) the facts assumed by us in relation to that privilege.

The (114) third article of the treaty of 1783, respecting the fisheries, and the (115) eighth article of that treaty, respecting the Mississippi, had not the slightest reference to each other, and were placed as remote, the one from the other, as the limits of that treaty could well admit. Whatever, therefore, (116) was the cause of inserting the fishing liberty, whether it was a voluntary and gratuitous grant on the part of Great Britain, or extorted from her as a condition on which the peace depended, it could have had no relation (117) to the free navigation of the Mississippi. Besides, the article relative

but, certainly, the majority believed (103) themselves to be permitted, their own construction to the contrary notwithstanding, to offer a very explicit proposition, with regard to the navigation of its principal (104) river; now, this offer I considered, for the reasons just suggested, not to be a violation of the instructions in question, but I considered it to be against both the letter and the spirit of our instructions of the 15th of April, 1813. By these instructions we were explicitly and implicitly directed "to avoid any stipulation which might restrain the United States from *excluding* the British traders from the navigation of the lakes and *rivers, exclusively within our own jurisdiction.*" This instruction applied with the greater force to the Mississippi, because, as it is believed, it was the *only river* to which it could apply.

While I believed, therefore, that we were permitted to offer a proposition, relative to the fishing liberty; and that, in treating concerning this liberty, or in discussing our claim to it, we in no way violated our instructions, nor affected the general rights which we were forbidden to bring into discussion; I did believe, and do still believe, that we were expressly and unequivocally forbidden to offer or to renew a stipulation for the free navigation, by the British, of the Mississippi, a river within our exclusive jurisdiction.

Considering, therefore, the fishing liberty to be entirely at an end, without a new stipulation for its revival; and believing that we were entirely free to discuss the terms and conditions of such a stipulation, I did not object to the article proposed by us, because any article on the subject was unnecessary, or contrary to our instructions, but I objected specially to that article, because, by conceding (105) in it, to Great Britain, the free navigation of the Mississippi, (106) we not only directly violated our instructions, but we offered, in my estimation, a price *much above its value*, and which could not *justly* be given.

In no view of the subject, could I discover any (107) analogy or relation between the two objects; and the only reason for connecting them, and making them mutual equivalents for each other, appeared to be, because they were both found in the treaty of 1783. If that treaty was abrogated by the war, as I consider it to have been, any connection between its parts must have ceased, and the liberty of navigating the Mississippi, by British subjects, must, at least, be completely at an end; for it will not, I trust, be attempted to continue it by a (108) *prescriptive* title, or to consider in as a (108) *reservation* made by the United States from any grant of sovereignty, which, at the treaty of peace, they accorded to Great Britain. If, indeed, it were such a reservation, it must have been intended for (110) *our benefit*, and of (111) course, no equivalent for the fishing (112) privilege, likewise for our benefit. If it is considered as a reservation made by Great Britain, it will reverse (113) all the facts assumed by us in relation to that privilege.

The (114) *third* article of the treaty of 1783, respecting the fisheries, and the (115) *eighth* of that treaty, respecting the Mississippi, had not the slightest reference to each other, and were placed as remote, the one from the other, as the limits of that treaty could well admit; whatever, therefore, (116) might have been the cause of inserting the fishing liberty, whether it was a voluntary and gratuitous grant on the part of Great Britain, or extorted from her as a condition, on which the peace depended, it could have had no relation (117) with the free navigation of the Mississippi. Besides, the

to this river must, from the evident views of the parties at the time, from (118) their supposed relations to each other, and from their known relations to a third (119) power, as to this river, have been considered of mutual and equal advantage, and furnished no subject for compensation or adjustment in any other provision of that treaty. Both parties believed that this river touched the territories of both, and that, of course, both had a right to its navigation. As Spain possessed both banks of this river, to a considerable distance from its mouth, and one of its banks nearly throughout its whole extent, both parties had an interest in uniting to prevent that power from obstructing its navigation. Had not the article been intended to engage the parties in relation to Spain, they (120) would, probably, have limited it to the navigation of the river (121) as far as their own territories extended on it, and not have stipulated for this navigation to the ocean, which necessarily carried it through the exclusive territories of Spain.

If the circumstances had been, in fact, such as the parties at the time believed them to be, and with a view to which they acted; or had these circumstances subsequently experienced no radical change; Great Britain would have gained now no more than she would have granted by the (122) revival of the article in relation to (123) the Mississippi, and would not, any more than in 1783, have acknowledged any equivalent to be conferred by it for our liberty relative to the fisheries. The circumstances, however, assumed by the parties, at the time, in relation to Great Britain, and from which her rights were deduced, have not only, in part, been discovered not to have existed, but those which did exist have been entirely changed by subsequent events. It has (124) been ascertained that the territories assigned to Great Britain, no where, in fact, reached the Mississippi; and the acquisition of Louisiana by the United States (125) has forever removed the Spanish jurisdiction that river.

The whole consideration, therefore, on the part of Great Britain, whether derived from her territorial rights, or from her part of the reciprocal obligations relative to Spain, having entirely failed, our engagements, entered into on account of that consideration, may be fairly construed to have terminated with it.

In this view of the subject, Great Britain could have had no title to the navigation of the Mississippi, even if a war had not taken place between the parties. To renew, therefore, the claims of Great Britain, under that article, subject to this construction, would be granting her nothing; and to renew that article, independent of this construction, and without any reference to the circumstances that attended its origin, in 1783, or to the events which have since occurred in relation to it, would be granting her advantages not only entirely (126) uni-lateral, as it relates to the article itself, but, (127) as I believe, of much greater importance than any which we could derive from the liberty relative to the fisheries.

article relative to this river, must, from the evident views of the parties at the time, from (118) their relations to each other, and from their known relations to a third (119) power, have been considered of mutual and equal advantage, and furnished no subject for compensation or adjustment in any other provision of that treaty.

Both parties believed that this river touched the territories of both, and that of course both had a right to its navigation. As Spain possessed both banks of this river to a considerable distance from its mouth, and one of its banks nearly throughout its whole extent, both parties had an interest in uniting to prevent that power from obstructing its navigation. Had not the article been intended to engage the parties in relation to Spain, they (120) probably would have limited it to the navigation of the river, (121) so far as their own territories extended on it, and not have stipulated for its navigation to the ocean, which necessarily carried it through the exclusive territories of Spain. If the circumstances had been, in fact, such as the parties at the time believed them to be, and with a view to which they acted, or had these circumstances subsequently experienced no radical change, Great Britain would have gained now, no more than she would have granted by the (122) renewal of the article in relation to (123) the navigation of the Mississippi, and would not, any more than in 1783, have acknowledged any equivalent to be conferred by it, for our liberty relative to the fisheries. The circumstances, however, assumed by the parties at the time, in relation to Great Britain, and from which her rights were deduced, have not only, in part, been since discovered not to have existed, but those which did exist have been entirely changed by subsequent events.

It has (124) been clearly ascertained, that the territories, assigned to Great Britain, no where, in fact, reached the Mississippi; and, the acquisition of Louisiana, by the United States, (125) had forever removed the Spanish jurisdiction from that river. The whole consideration, therefore, on the part of Great Britain, whether derived from her territorial rights, or from her part of the reciprocal obligations, relative to Spain, having entirely failed, our engagements, entered into, on account of that consideration, may be fairly construed to have terminated with it.

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If the article which we (128) offered merely intended to rescue the third and eighth articles of the treaty of 1783, from the operation of the present war, and to continue them precisely as they were immediately prior to this war, the third article being then in full force, and the eighth article being no longer (129) obligatory, we should have attempted to exchange, like General Drummond, the dead for the living.

It is not surprising, therefore, that the British government should, in suspecting such an intention, (130) have rejected our proposition. I was opposed, however, to making the proposition, not only because I was convinced that it was (131) offered with no such intention, but because I believed it would give to Great Britain the free navigation of the Mississippi, under circumstances, and evidently for an object, which would place it on very distinct grounds from those on which it was placed by the treaty of 1783.

The whole of the Mississippi being now exclusively within the acknowledged jurisdiction of the United States, a simple renewal of the British right to navigate it would place that right beyond the reach of the war, and of every other previous circumstance which might have impaired or terminated it; and the (132) power to grant, on our part, being now complete, the right to enjoy, (133) on hers, under our grant, must be complete also.

It would be absurd to suppose that any thing impossible was intended, and that Great Britain was to be allowed to navigate the Mississippi (134) precisely as she (135) could have navigated it immediately after the treaty of 1783; as if her territories extended to it, and as if Spain was (136) in entire possession of one of its banks and of a considerable portion of the other. The (137) revival of the British right to navigate the Mississippi would be, (138) under existing circumstances, a new and complete grant to her, measured by these circumstances, and thence embracing not only the entire freedom of the whole extent of (139) that river, but the unrestrained access to it across our territories. If we did not intend (140) this, we intended nothing which Great Britain could accept; and, whatever else (141) might have been intended, if not at once rejected by her, would hereafter have been the subject of new and endless controversy. When, however, we connected the revival of the navigation of the Mississippi with the revival of the (142) liberty of taking and curing fish within the British jurisdiction, two things, which never before had any relation to each other, we evidently meant, if we acted (143) in good faith, not only to concede, as well as to obtain something, but also to be understood as conceding an equivalent for what we obtained.

In thus offering the navigation of the Mississippi, and the access to it through our territories, as an equivalent for the fishing liberty, we not only placed both on ground entirely different from that (144) in which they respectively stood in the treaty of 1783, and acted somewhat inconsistently with our own reasoning relative to

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The whole of the Mississippi being now exclusively within the acknowledged jurisdiction of the United States, a simple renewal of the British right to navigate it would place that right beyond the reach of the war; and every other previous circumstance which might have impaired or terminated it, and the (132) right to grant, on our part, being now complete, the right to enjoy, (133) on the part of Great Britain, must be complete also. It would be absurd to suppose that any thing impossible was intended, and that Great Britain was to be allowed to navigate the Mississippi (134) only as she (135) would have navigated it immediately after the treaty of 1783, as if her territories extended to it, and as if Spain was (136) in the entire possession of one of its banks, and of a considerable portion of the other. The (137) recognition of the British right to navigate the Mississippi, would be, (138) *under existing circumstances*, a new and complete grant to her, measured by these circumstances, and, thence, embracing not only the entire freedom of the whole extent of (139) the river and its tributary waters, but unrestrained access to it across our territories. If we did not intend (140) to offer this, we intended to offer nothing which Great Britain could accept; and whatever else (141) we might have intended to offer, if not at once rejected by her, would at least have been, hereafter, the subject of new and endless controversy.

When, however, we connected the revival of the navigation of the Mississippi with the revival of the (142) privilege of taking and curing fish within the British jurisdiction, two things which never before had any relation to each other, we evidently meant, if we acted (143) with good faith, not only to concede, as well as to obtain something, but also to be understood as conceding an equivalent for what we obtained.

In thus offering the navigation of the Mississippi, and the access to it through our territories, as an equivalent for the fishing liberty, we not only placed both on ground entirely different from that (144) on which they respectively stood in the treaty of 1783, and acted somewhat inconsistently with our own reasoning, relative to

the origin and immortality of the latter, but we offered to concede (145) much more than we could hope to gain (146) by the arrangement, with whatever view its comparative effects might be estimated.

From the year 1783, to the commencement of the present war, the actual advantages derived from the fishing privilege by the people of the United States, were, according to the best information that (147) I can obtain on the subject, very inconsiderable, and annually experiencing a voluntary diminution.

It was discovered that the obscurity and humidity of the atmosphere, owing to almost incessant fogs, in the high northern latitudes, where this privilege was chiefly located, prevented the effectual curing of fish in those regions, and, consequently, lessened very much the value of the (148) liberty of taking them there. By far the greatest part of the fish taken by our fishermen before the present war, was (149) caught in the open sea or (150) upon our own coasts, and cured on (151) our own shores. This branch of the fisheries has been found to be inexhaustible, and has been pursued with so much more certainty and despatch than the privileged portion (152) within the British jurisdiction, that it has not only been generally preferred by our fishermen, but would probably, on longer experience, have been almost universally used by them. It was to be believed, therefore, that a discontinuance of the privilege of taking and curing fish, within the British jurisdiction, would not, at all, diminish the aggregate quantity taken by the people of the United States, or (153) very materially vary the details of the business. That part of the fisheries which would (154) still have belonged to us as a nation, being exhaustless, would afford an ample field for all the capital and industry hitherto employed in the general business of fishing, or merchandise of fish, and on that field might the few fishermen, who had hitherto used the liberty of taking and curing fish within the jurisdiction of Great Britain, exert their skill and labour without any serious inconvenience. (155) This liberty, liable (156) in a very considerable degree by the terms in which it was granted, to be curtailed by the government and subjects of a foreign state; already growing into voluntary disuse by our own citizens, on account of the difficulties inseparable from it, and absolutely incapable of extension; was totally unnecessary to us for subsistence or occupation, and afforded, (157) in no way, any commercial facility or political advantage. This privilege, too, while it was thus of little (158) or no utility to us, cost Great Britain literally (159) nothing.

The free navigation of the Mississippi, with the necessary access to it, is a grant of a very different character. If it was not heretofore used by Great Britain, it was, perhaps, because she did not consider herself entitled to it, or because the circumstances of the moment suspended its practical utility. The treaty of 1783 stipulated for her the navigation of this river, under the presumption that her territories extended to it, and, of course, could not intend to give her an access to it through our territories. The British possessions to the westward of Lake Erie, being almost entirely

the origin and immortality of the latter, but we offered to concede (145) *much more* than we could hope to gain (146) by the arrangement.

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unsettled, rendered, perhaps, the free navigation of the Mississippi, for the moment, of little advantage to her, particularly as her right to reach it was at least equivocal; and as, by another treaty, she could carry on trade with our Indians.

This navigation might, indeed, for a long time to come, be of little use to her for all the (160) legitimate purposes of transit and intercourse; but every change that could take place in this respect must increase its importance to her; while every change in the fishing liberty (161) would be to the disadvantage of the United States.

The freedom (162) of the Mississippi, however, is not to be estimated by the mere legitimate uses that would be made of it. The unrestrained and undefined access which would have been inferred from the article which we proposed, (163) would have placed in the hands of Great Britain and her subjects all the facilities of communication with our own citizens, and with the Indians inhabiting the immense regions of our western territory. It is not in the nature of things that these facilities should not have been abused for unrighteous purposes. A vast field for contraband (164) and intrigue would have been laid open, and our western territories would have swarmed with British smugglers and British emissaries. The revenue would have been defrauded by the illicit introduction of English merchandise, and the lives of our citizens, and the security of a valuable portion of our (165) country exposed to Indian hostilities, excited by an uncontrolled British influence. (166) If our instructions to guard against such an influence forbid us to renew the British liberty to trade with our Indians, we certainly violated the spirit of those instructions in offering the means of exercising that influence with still greater facility and effect than could result from that liberty.

What was there in the fishing liberty, either of gain to us, or loss to Great Britain, to warrant, in consideration of it, a grant to her of such means of fraud and annoyance? What justice or equality was there in exposing to all the horrors of savage warfare the unoffending citizens of an immense tract of territory, (167) not at all benefited by the fishing privilege, merely to provide for the doubtful accommodation of a (168) few fishermen, in a remote quarter, entirely exempt from the danger?

Such have been the reasons which induced me to differ from a majority of my colleagues with regard to the article in question, and which I trust will be (169) thought sufficient, at least, to vindicate my motives.

The unfeigned respect which I feel for the integrity, talents, and judgment of those gentlemen, would restrain me from opposing them on slight grounds, and a deference for their opinions makes me almost fear that I have erred in dissenting from them on the present occasion. I can but rejoice, however, that the article, as

tled, rendered, perhaps, the free navigation of the Mississippi, for the moment, of little advantage to her; particularly, as her right to reach it was, at least, equivocal; and, as by another treaty, she could carry on trade with our Indians.

This navigation might, indeed, for a long time to come, be of little use to her for all the (160) *legitimate* purposes of transit and intercourse; but every change that could take place in this respect must increase its importance to her, while every change in the fishing liberty (161) must be to the disadvantage of the United States.

The freedom (162) of navigating the Mississippi, however, is not to be estimated by the mere legitimate uses that would be made of it. The unrestrained and undefined access, which would have been inferred from the article which we proposed, (163) must have placed in the hands of Great Britain and her subjects, all the facilities of communication with our own citizens, and with the Indians inhabiting the immense regions of our western territory. It is not in the nature of things that these facilities should not have been abused for unrighteous purposes. A vast field for contraband (164) and for intrigue would have been laid open, and our western territories would have swarmed with British smugglers and British emissaries. The revenue would have been defrauded by the illicit introduction of English merchandise, and the lives of our citizens, and the security of a valuable portion of our (165) country, would have been exposed to Indian hostility, excited by an uncontrolled British influence. (166) If our instructions of the 15th of April, 1813, already cited, forbid us, in order to guard against such an influence, to renew the treaty of 1794, "allowing the North West Company and British traders to carry on trade, with the Indian tribes within our limits, a privilege, the *pernicious* effects of which have been *most sensibly felt* in the present war," we certainly violated the spirit of those instructions in offering the means of exercising that influence with still greater facility and effect than could result from that *privilege*.

What was there in the fishing liberty, either of gain to us or loss to Great Britain, to warrant, in consideration of it, a grant to her of such means of fraud and annoyance? What justice or equality was there, in exposing to all the horrors of savage warfare, the unoffending citizens of an immense tract of territory, (167) not at all, or but faintly, benefited by the fishing privilege, merely to provide for the doubtful accommodation of a (168) few fishermen, annually decreasing in number, in a remote quarter, and entirely exempt from the danger.

Such have been the reasons which induced me to differ from a majority of my colleagues with regard to the article in question, and which, I trust, will be (169) deemed sufficient, at least, to vindicate my motives.

The unfeigned respect which I feel for the integrity, talents, and judgment, of those gentlemen, would restrain me from opposing them on slight grounds, and a deference for their opinions makes me almost fear that I have erred in dissenting from them on the present occasion. I can but rejoice, however, that the article, as

proposed by us, was rejected by Great Britain; whatever were her reasons for rejecting it; whether, as above suggested, (170) she suspected some tacit reservation, or want of faith on our part, or supposed, from the price we at once bid for the fishing privilege, that we overrated its value, and might concede for it even more than (171) the navigation of the Mississippi, with all its accessary advantages.

(172) We are still at liberty to negotiate for that privilege in a treaty of commerce, should it be found expedient, and to offer for it an equivalent, fair in its comparative value, and just in its relative effects. In any other way, I trust, we shall not consent to purchase its renewal.

I have the honour to be, with profound respect,
Sir, your faithful and obedient servant,

JONA. RUSSELL.

My argument to demonstrate the abrogation of the treaty of 1783, by the present war, and the consequent discontinuance of the fishing privilege, will, I trust, not be ascribed to any hostility to those who were interested in that privilege. I have been always ready, and am still ready, to make every sacrifice for the preservation of that privilege which its nature and utility can justify; but I have conscientiously believed that the free navigation of the Mississippi was pregnant with too much mischief to be offered indirectly under our construction of the treaty, or directly, as a new equivalent for the liberty of taking and curing fish within the British jurisdiction.

We had three other ways of proceeding:

First. To contend for the indestructibility of the treaty of 1783, thence inferring the continuance of the fishing privilege, without saying any thing about the navigation of the Mississippi, which would have reserved our right of contesting this navigation on the grounds I have mentioned, specially applicable to it.

Secondly. To have considered the treaty at an end, and offered a reasonable equivalent, wherever it might be found, for the fishing privilege.

Thirdly. To have made this liberty a sine qua non of peace, as embraced by the principle of status ante bellum.

To either of these propositions I would have assented, but I could not consent to grant to revive the British right to the navigation of the Mississippi, in order to procure or preserve the fishing liberty.

proposed by us, was rejected by Great Britain, whatever were her reasons for rejecting it; whether, as above suggested, (170) she might have suspected some tacit reservation, or want of faith, on our part; or supposed, from the price we at once bid for the fishing privilege, that we overrated its value, and might concede for it even more than (171) the free navigation of the Mississippi, with all its accessary advantages.

(172) Let me not, in any thing which I have said, be misunderstood. In judging on the interests of the great whole, I am not disposed to undervalue the interests on any of the constituent parts. No one can more highly appreciate than I do, a branch of industry which not only adds to national wealth, but seems to create it. Nor can any one more warmly admire the usefulness and patriotism of those citizens who are engaged in it, and who have never ceased to deserve well of the republic. In times of peace they bring home, amidst conflicting elements, the treasures of the deep to enrich their country; and in times of war they contribute, by their skill and intrepidity, to her defence and glory. But, in our country, where all are equal, the essential security and prosperity of the many must be preferred to the convenience and minor interests of the few. In giving this preference, I will frankly confess I had to silence early prepossions and local predilections, and to listen to the councils of a more enlarged patriotism; and to this patriotism I dare appeal for my vindication, not only with those to whom I am officially responsible, but with those with whom I am more immediately connected in society, and whose interests may be considered to have been unfavourably affected by the views which I have deemed it to be my duty to adopt. I have always been willing to make any sacrifice for the fishing privilege, which its nature, or comparative importance could justify, but I conscientiously believe that the free navigation of the Mississippi, and the access to it which we *expressly offered*, were pregnant with too much mischief to be offered, indirectly, under our construction of the treaty; or, directly, as they were in fact offered, as a new equivalent for the liberty of taking and drying fish within the British jurisdiction.

I will frankly avow, however, that my impressions were, and still are, that Great Britain, calculating on the success of the powerful expedition which she has sent against New-Orleans, confidently expected that she would have become the mistress of Louisiana and all its waters; and that she did not, in this event intend to abandon her conquest under the terms of the treaty of Ghent.

Her ministers had, almost from the commencement of the negotiation, not only affected to consider our acquisition of Louisiana as evidence of a spirit of agrandizement, but insinuated a *defect* in our title to it. Expecting, therefore, to obtain the free navigation of the Mississippi for nothing, she would not consent to part even with the fishing liberty as an equivalent. If she be disappointed in her views on Louisiana, and I trust in God and the valour of the west that she will be, I shall not be surprised if, hereafter, she grant us the fishing privilege, which costs her absolutely nothing, without any extravagant equivalent whatever.

At any rate, we are still at liberty to negotiate for that privilege in a treaty of commerce, and to offer for it an equivalent, fair in its comparative value, and just in its relative effects; and to negotiate for it in this way is evidently more wise than to demand it as a *condition* of peace, or to offer for it a price beyond its worth, and which, however excessive, runs the hazard of being refused, merely by the operation of those unaccommodating passions which are inevitably engendered by a state of war.

I have the honour to be, with the most profound respect, sir, your faithful and obedient servant, JONA. RUSSELL.

To the Hon'ble JAMES MONROE,

Sec'y of State of the United States, &c. &c. &c.

A true copy of a paper left by Jonathan Russell, esq. at the Department of State, 22d April, 1822, to be communicated to the House of Representatives of the United States.

J. Q. ADAMS, *Secretary of State.*

REMARKS

On a Paper delivered by Mr. Jonathan Russell, at the Department of State, on the 22d of April, 1822, to be communicated to the House of Representatives, as the duplicate of a Letter written by him at Paris, the 11th of February, 1815, to the then Secretary of State, and as the Letter called for by the Resolution of the House, of 19th April, 1822.

The first remark that presents itself upon this *duplicate*, is, that it is not a copy of the letter really written by Mr. Russell, at Paris, on the 11th of February, 1815, to the Secretary of State, and received by him. The latter was marked "*private*," and, as such, was not upon the files of the Department of State; and, although of the same general purport and tenor with the so-called duplicate, differed from it in several highly significant passages, of which the following parallel, extracted from the two papers, presents one example:

ORIGINAL.

"How far we conformed to this instruction, with regard to the general right to Louisiana, it is not necessary for me here to inquire; but certainly the majority believed (103) themselves permitted to offer a very explicit proposition with regard to the navigation of its principal (104) river. *I believed, with them, that we were so permitted,* and that we were, likewise, permitted to offer a proposition relative to the fishing liberty, and, had the occasion required it, to make proposals concerning the trade to the British East Indies. I was persuaded, that treating relative to these privileges, or discussing the obligation or expediency of granting or withholding them, respectively, violated, in no way, our instructions, or affected the general rights which we were forbidden to bring into discussion."

DUPLICATE.

"How far we conformed to this instruction, with regard to the general right to Louisiana, it is not necessary for me here to inquire; but certainly the majority believed (103) themselves to be permitted, their own construction to the contrary notwithstanding, to offer a very explicit proposition with regard to the navigation of its principal (104) river; now, this offer, I considered, for the reasons just suggested, not to be a violation of the instructions in question, but I considered it to be against both the letter and the spirit of our other instructions of the 15th of April, 1813. By these instructions, we were explicitly and implicitly directed 'to avoid any stipulation which might restrain the United States from *excluding* the British traders from the navigation of the lakes and *rivers exclusively within our own jurisdiction.*' This instruction applied with the greater force to the Mississippi, because, as it is believed, it was the *only river* to which it could apply.

"While I believed, therefore, that we were permitted to offer a proposition relative to the fishing liberty, and that in treating concerning this liberty, or in discussing our claim to it, we in no way violated our instructions, nor affected the general rights which we were forbidden to bring into discussion, I did believe, and do still believe, that

ORIGINAL. DUPLICATE.

we were expressly and unequivocally forbidden to offer, or to renew, a stipulation for the free navigation, by the British, of the Mississippi, a river within our exclusive jurisdiction."

It is here seen that, while in the original letter Mr. Russell did, with the majority of his colleagues, believe that we were permitted by our instructions to make the proposition with regard to the navigation of the Mississippi, as well as a proposition relative to the fishing liberty, he had, when writing the duplicate, brought himself to the belief, not only that we were not so permitted, but that he had, even at Ghent, considered it as a direct violation both of the letter and spirit of our explicit and implicit instructions of 15th April, 1813. The solution of this difference in the mind of Mr. Russell, between the writing of the original and the duplicate of his letter, may be found in this circumstance. The proposition relating to the navigation of the Mississippi, and the fishery, was made to the British plenipotentiaries on the 1st of December, 1814. It had been discussed at the meetings of the American mission, on the preceding 28th and 29th of November. On the 24th of that month, the American plenipotentiaries had received a letter of instructions from the Secretary of State, dated 19th October, 1814, and containing the following passages:

"It has been judged proper to communicate to Congress so "much of the instructions given to you by this Department, as "would show the terms on which you were authorized to make "peace. These, as well as your communications, have been print-"ed, and several copies are now forwarded to you, as it is believed "they may be usefully disposed of in Europe. Should any circum-"stance have unexpectedly prolonged the negotiation, and you find "the British commissioners disposed to agree to the *status ante bel-"lum*, you will understand that you are authorized to make it the "basis of a treaty."

Now, the *status ante bellum*, upon which we were thus expressly and unequivocally permitted to conclude a treaty, included not only the recognition of the entire treaty of peace of 1783, but the revival of the first ten articles of the treaty of 1794; not only the freedom to the British to navigate the Mississippi, but free ingress into our territories, and free trade with our Indians. And so entirely was that part of the instructions of 15th April, 1813, now cited by Mr. Russell, considered by the President as cancelled, that it was omitted from that copy, which had been communicated to Congress, of "so much of the instructions as would show the terms on which we were authorized to make peace," and of which several printed copies were thus forwarded to us. (*See Wait's State Papers, vol. IX, p.* 339–358.)

It was scarcely possible that, within the compass of one week, Mr. Russell should have forgotten the receipt of the instruction of

19th October, 1814, fresh from Washington ; nor at all possible that he should have considered us as then bound by the instruction of 15th April, 1813, to which, in his duplicate, he now so emphatically refers. The 11th of February, 1815, was yet so recent to the date of the conclusion of the treaty, that, in writing the original of his letter, the recollection of the new instructions of October, 1814, had doubtless not escaped him. But when the duplicate was written, other views had arisen ; and their aspects are discovered in the aggravation of charges against the memory of a dead, and the character of living colleagues.

But whether the real sentiments of Mr. Russell, at Paris, on the 11th of February, 1815, with regard to the transactions to which this passage relates, are to be taken as indicated in the original, or in the duplicate, certain it is that the vehement objections to the proposed article, which, in the *duplicate*, appear to have made so deep an impression on his mind, had as little been made known to his colleagues at the time of the discussions at Ghent, as they appear to have been to himself, when writing the *original* of the same letter.

The proposal, to which the whole of Mr. Russell's letter, in both its various readings, relates, was made to the British plenipotentiaries, not by a majority, but by the whole of the American mission, including Mr. Russell, as may be seen by the protocol of the conference of the 1st December, 1814, and by the letter from the American to the British plenipotentiaries, of 14th December, 1814. In that letter, already communicated to the House, the American plenipotentiaries, referring to the article in question, expressly say : "To such an article, which they viewed as merely declaratory, the undersigned had no objection, and have offered to accede :" and to that letter the name of Mr. Russell is subscribed.

At the time when the letter from Paris was written, or within a few days thereafter, all the colleagues, whose conduct it so severely censures, in relation to measures, to which Mr. Russell's sanction and signature stood equally pledged with their own, were at Paris, and in habits of almost daily intercourse with him. They little suspected the colouring which he was privately giving, without communication of it to them, of their conduct and opinions, to the heads of the government, by whom he and they had been jointly employed in a public trust of transcendent importance ; or the uses to which this denunciation of them was afterwards to be turned.

Had the existence of this letter from Paris been, at the time when it was written, known to the majority of the mission, at whose proposal this offer had been made ; to that majority, who believed that the article was perfectly compatible with their instructions, consistent with the argument maintained by the mission, important for securing a very essential portion of the right to the fisheries, and in nowise affecting unfavourably the interest of any section of the Union, they would doubtless have felt that its contents called much more forcibly upon them, to justify to their own government them-

selves and their motives for making that proposal, than Mr. Russell could be called upon to justify himself for merely having been in the minority upon the question whether an article should be proposed, which he did actually concur in proposing, and which the adverse party had not thought worth accepting.

The writer of these remarks is not authorized to speak for his colleagues of the majority; one of whom is now alike beyond the reach of censure and panegyrick; and the other, well able, when he shall meet this disclosure, to defend himself. But he believes of them what he affirms of himself, that had they entertained of the projected article, and of the argument maintained by the mission, the sentiments avowed in either of the variations of Mr. Russell's letter from Paris, no consideration would have induced them to concur in proposing it, or to subscribe their names to a paper declaring that they had no objection to it.

Still less, if possible, would they have thought it reconcileable with their duty to their country, had they entertained those sentiments, to have subscribed, on the 25th of December, 1814, the joint letter of the mission to the Secretary of State, already communicated to Congress, and on the same day to have written the separate and secret letter, fore-announcing that of 11th of February, 1815, from Paris.

Besides the memorable variation between the original and duplicate of the letter of 11th February, 1815, which has been exhibited in parallel passages extracted from them, there are others not less remarkable. In the course of the *duplicate*, the total and unqualified abandonment of the *rights* of the poor fishermen, is compensated by an eloquent panegyric upon their usefulness to the country, their hardy industry, their magnanimous enterprise, and their patriotic self-devotion. Little of this appears in the original; and that little, in the after-thought of a postscript. Towards the close of the *duplicate*, the spirit of prophecy takes possession of the writer. By his "trust in God, and in the valour of the West," he foresees the victory of General Jackson at New-Orleans. He foresees the convention between the United States and Great Britain, of October, 1818. In the *original* there is no prophecy—no "trust in God, and in the valour of the West."

With all these varieties the two copies of the letter form an elaborate and deeply meditated dissertation to prove:

1. That the treaty between the United States and Great Britain, of 1783, the treaty which upon its face is a treaty of independence, a treaty of boundaries, a treaty of partition, as well as a treaty of peace—was, in his estimation, all his signatures at Ghent to the contrary notwithstanding, a mere treaty of peace, totally abrogated by the war of 1812.
2. That the same treaty, was a treaty *sui generis*, consisting of two parts; one, of rights appertaining to sovereignty and independence; and the other, of special grants and privileges; of which the former were permanent, and the latter abrogated by the war.

3. That the principles assumed, and the argument maintained, by the majority of the Ghent Mission, and to which he had subscribed his name in all the joint communications of the Mission, as well to the British plenipotentiaries as to his own government, were a mass of errors, inconsistencies, and absurdities.
4. That the offer to the British plenipotentiaries of a right to the British to navigate the Mississippi, was, in the opinion of the majority, and also in his own opinion, permitted by our instructions, and in no ways violated them.
5. That the same offer was directly contrary to the construction given by the majority to their instructions, and, as he had always thought, and still thought, contrary to explicit and implicit, express and unqualified prohibitions, in those instructions.
6. That the offer of the right to navigate the Mississippi, as an equivalent for the fisheries, was the offer of an excessive price, for a privilege worth little or nothing.
7. That, extravagant as that offer (to which he signed a letter declaring that he had no objection) was, it was rejected by the adverse party; because they thought it an offer of the dead for the living; or because, they hoped to get still more for the worthless privilege; or, because, they expected to take and keep Louisiana, and thus get the navigation of the Mississippi for nothing; or, because, they were blinded by the unhappy passions incident to war; but that he *foresaw*, that they would HEREAFTER grant all the valuable part of the same worthless privilege for nothing.
8. That there was no sort of relation whatsoever between a privilege for the British to navigate in waters within our jurisdiction, and a privilege for us to fish in waters within British jurisdiction; because one of these privileges had been stipulated in the *third*, and the other in the *eighth* article, of the treaty of 1783; and therefore, that it was absurd to offer one as an equivalent for the other.
9. Lastly, that the offer to the British of the right to navigate the Mississippi, was pregnant with mischief to the western country—to "*the unoffending citizens* of an immense tract of "territory, not at all, or but faintly benefited by the fishing "privilege, merely to provide for the doubtful accommodation "of a few fishermen, annually decreasing in number, in a remote quarter, and entirely exempt from the danger."

Upon most of these points, so far as argument is concerned, it might, upon the mere statement of Mr. Russell's positions, be left to his ingenuity to refute itself. His first and second points, with regard to the character of the treaty of 1783, considered as doctrines, are evidently inconsistent with each other. The variation between the original and duplicate of his letter upon the fourth and fifth points, is something more than inconsistency; something more

even than self-contradiction. The whole letter is a laborious tissue of misrepresentation of every part of its subject; of the conduct and sentiments of his colleagues who constituted the majority of the mission; and of his own conduct and sentiments in opposition to them. It substantially charges them with deliberate and wanton violation, in the face of his solemn warning, of the positive and unequivocal instructions of their government, for the sake of sacrificing the interest, the peace, the comfortable existence of the whole western country, to the doubtful accommodation of a few eastern fishermen, and in support of a claim to which they had not the shadow of a right.

I say it is a tissue of misrepresentations—of the subject, of the conduct and sentiments of his colleagues, and of his own conduct in opposition to them.

1. Of the subject. Mr. Russell represents the offer of an article, granting to the British the right of navigating the Mississippi, as an equivalent for the grant of a fishing privilege in British jurisdiction, as if it had been a separate and insulated proposal of new grants, in a distinct article, without reference to the state of the negotiation at the time when it was made, to the occasion upon which it was made, and to the considerations by which it was induced.

Mr. Russell represents the article as if offered under circumstances, when it was, by both parties, acknowledged that the British had no claim to territory, *to the Mississippi*. This is a direct and positive perversion of the whole statement of the subject.

Mr. Russell represents the offer of a right to navigate the Mississippi, and of access to it from the British territories as general and unqualified; as giving access to British traders and British emissaries to every part of the western country, and to intercourse with all our Indians. The proposal was, of a limited access from a single spot of the British territory, to the river, for the purpose of navigating the river with merchandise, upon which the duties of import should have been first paid.

In consequence of these misrepresentations, Mr. Russell brings in British smugglers, British emissaries, and all the horrors of Indian warfare, upon the western country, as necessary inferences from a proposal, not that which was made, but that into which it is distorted by his misrepresentations.

2. Of the conduct and sentiments of his colleagues.

Mr. Russell represents his colleagues as having deliberately, and against his declared opinion, violated both the letter and the spirit of their most explicit and implicit, express and unequivocal, instructions from their own government. He charges them, also, with having violated their own construction of their instructions.

It is true that, in another reading of the same letter, purporting to have been written on the same day, he acquits them entirely of all violation of their instructions, and declares he had always been of that opinion.

Mr. Russell ascribes to his colleagues opinions which they never entertained, arguments which they never advanced, and doctrines which they not only would disclaim with indignation, but diametrically opposite to those which they did maintain. He imputes to them the opinion that the Independence of the United States was derived only from the treaty of peace of 1783, and that all the rights stipulated by it, in favour of the people of the United States, were mere *grants* from the crown of England. This was the British doctrine, which Mr. Russell well knew his colleagues rejected with disdain, but which he himself countenances by maintaining the British side of the argument, that the fishing liberty, stipulated in the treaty of 1783, was abrogated *ipso facto* by the war of 1812.

He imputes to them, as an inconsistency with their other imputed opinion, that they rested their claim to the fishing privilege, upon *prescription;* and this notwithstanding all the light of learning with which he had irradiated them, from the lucid sources of "*jus meræ facultatis;*" of "*ultra memoriam hominis;*" of "*nullum tempus occurrit regi;*" and of the imprescriptible character of fisheries. Of all this not one word was said at Ghent. The majority never asserted the right of the fishing privilege, as resting upon the right of prescription; nor had they ever the benefit of Mr. Russell's learned labours to prove that it was not applicable to the subject.

3. Of his own conduct and sentiments, in opposition to those of the majority of his colleagues.

The parallel passages from the original and duplicate of his letter remove all necessity for further proof of this. But that is not all. Throughout the letter, Mr. Russell holds himself forth as having been the intrepid and inflexible asserter and supporter of the rights of the West, against the majority of his colleagues; as having, by a painful struggle, obtained a conquest over his early prejudices and local partialities, and enlarged his intellectual faculties and patriotism, to become the champion and vindicator of the interests of the West. Of all this, nothing was made known to his colleagues of the majority at Ghent. The article to which his letter conjures up such formidable objections was drawn up and proposed to the mission by a distinguished citizen of the western country. It was opposed by another citizen from the same section of the Union. Of the five members of the mission Mr. Russell was the person who took the least part in the discussion. He neither objected that it was contrary to our instructions, nor depreciated the value of the fisheries; nor painted the dangers of British smugglers and emissaries, or the horrors of Indian warfare, as impending over the *unoffending* inhabitants of the western country from the measure. He gave, it may be, a silent vote against proposing the article; and, when it was determined by the majority to propose it, concurred in proposing it; was present at the conferences with the British plenipotentiaries when it was proposed

to and discussed with them, and heard from them the reasons which induced them to reject it, which reasons did not embrace one of those which he has so severely tasked his sagacity to devise for them; but, plainly and simply, because they said it was clogged with conditions which made it of no value to them, or, at least, not of value to induce them to concede that our fishing liberties, within British jurisdiction, should continue, in return: and he afterwards signed a letter to the British plenipotentiaries, together with all the other members of the mission, declaring that they had no *objection* to the article, considering it as merely declaratory.

If Mr. Russell had entertained at Ghent the sentiments relating to this measure, disclosed in the duplicate, or even those avowed in the original of his letter, he is to account for it to his conscience and his country, that he ever assented to it at all. He was not under the slightest obligation to assent to it. As an act of the majority, it would have been equally valid without his concurrence or signature as with it. More than one member of the mission, and on more than one occasion, signified his determination to decline signing the treaty, if particular measures, proposed by the British plenipotentiaries, should be acceded to by the majority. A refusal by any one member to concur in any measure upon which a majority were agreed, would at least have induced the majority to re-consider their vote, and in all probability to have cancelled it. In a case of such transcendent importance as this, of high interests, generous policy, humane and tender sympathies, wantonly to be sacrificed, in defiance of the most express and unqualified instructions, to the paltry purpose of accommodating a few fishermen, destitute of all claim of right, how could Mr. Russell sit patiently in conference with the British plenipotentiaries, and join in the offer of it to them? How could he subscribe his name to a letter declaring he had no objection to it? Had Mr. Russell dissented from this measure of the majority, and they had still persisted in it, he would doubtless have reported to his own government the reasons of his dissent; his colleagues of the majority would in like manner have reported theirs; and the responsibility of each party would have rested, as it ought, upon their respective acts. To concur individually in the measure; to sign all the papers approving it; and then secretly to write to the government a letter of censure, reproach, and misrepresentation, against it and those who proposed it—was, indeed, a shorter and easier process.

Mr. Russell, therefore, did not entertain or express at Ghent, the opinions disclosed in his letter from Paris, and has been as unfortunate in the representation of his own conduct and sentiments, as in that of the subject of his letter, and in that of the sentiments and conduct of his colleagues.

But there is a point of view more important than any regard to his conduct and sentiments, in which his letter is yet to be considered. If there were any force in his argument against the mea-

sures, or any correctness in his statements against his colleagues, it is proper they should be sifted and examined.

Let, us, therefore, examine the proposed article in both its parts:—first, as relates to the fishing liberty for us; and secondly, to the navigation of the Mississippi by the British. And, in order to ascertain the propriety of the principles assumed, and of the measures adopted by the American commissioners, as now in question, let us premise the state of things as they existed, and the circumstances under which this proposal was offered.

By the third article of the treaty of 1783, it was agreed, that the people of the United States should *continue* to enjoy the fisheries of Newfoundland and the Bay of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries *used at any time theretofore to fish;* and, also, that they should have certain fishing liberties, on all the fishing coast within the British jurisdiction of Nova Scotia, Magdalen Islands, and Labrador. The title by which the United States held those fishing rights and liberties was the same. It was the possessory use of the right, or, in Mr. Russell's more learned phrase, of the "*jus meræ facultatis*," at any time theretofore as British subjects, and the acknowledgment by Great Britain of its *continuance* in the people of the United States after the treaty of separation. It was a national right; and, therefore, as much a *right*, though not so immediate an interest, to the people of Ohio and Kentucky, aye and to the people of Louisiana, after they became a part of the people of the United States, as it was to the people of Massachusetts and Maine. The latter had always used it, since they had been British colonists, and the coasts had been in British dominions. But, as the settlement of the colonies themselves had not been of time immemorial, it was not, and never was pretended to be, a title by prescription.

Such was the title of the United States to the fisheries—prior possession, and acknowledgment by the treaty of 1783.

The commissioners at Ghent had received from the Secretary of State a letter of instruction, dated 25th of June, 1814, containing the following passage:

"Information has been received from a quarter deserving of attention, that the late events in France have produced such an effect on the British government, as to make it probable that a demand will be made at Gothenburg, to *surrender our right to the fisheries*, to abandon all trade beyond the Cape of Good Hope, and to cede Louisiana to Spain. We cannot believe that such a demand will be made; should it be, you will of course, treat it as it deserves. These rights must not be brought into discussion. If insisted on, your negotiations will cease."

Now, it is very true that a majority of the commissioners did construe these instructions to mean, that the right to the fisheries was *not to be surrendered*. They did not subtilize, and refine, and inquire, whether they could not surrender a part, and yet not bring the right into discussion, whether we might not give up a liberty,

and yet retain a right; or whether it was an *argument*, or an *agreement*, that was forbidden. They understood, that the fisheries *were not to be surrendered.*

The demand made by the British government was first advanced in an artful and ensnaring form. It was by assuming the principle that the right had been forfeited by the war, and by notifying the American commissioners, as they did at the first conference, "that "the British government did not intend to *grant* to the United "States, gratuitously, the privileges formerly granted by treaty to "them, of fishing within the limits of the British sovereignty, and "of using the shores of the British territories for purposes con-"nected with the fisheries." Now to obtain the *surrender* of thus much of the fisheries, all that the British plenipotentiaries could possibly desire, was, that the American commissioners should acquiesce in the principle, that the treaty of 1783 was abrogated by the war. Assent to this principle would have been surrender of the right. Mr. Russell, if we can make any thing of his argument, would have *assented*, and surrendered, and comforted himself with the reflection, that, as the right had not been brought into discussion, the instructions would not have been violated.

But, however clearly he expresses this opinion in his letter, and however painfully he endeavours to fortify it by argument, he never did disclose it to the same extent at Ghent. The only way in which it was possible to meet the notification of the British plenipotentiaries, without *surrendering* the rights which it jeopardized, was by denying the principle upon which it was founded. This was done by asserting the principle, that the treaty of Independence of 1783 was of that class of treaties, and the right in question of the character, which are not abrogated by a subsequent war; that the notification of the intention of the British government not to *renew the grant*, could not affect the right of the United States, which had not been forfeited by the war; and that, considering it as still in force, the United States needed no new grant from Great Britain to revive, nor any new article to confirm it.

This principle I willingly admit was assumed and advanced by the American commissioners at my suggestion. I believed it not only indispensably necessary to meet the insidious form in which the British demand of surrender had been put forth; but sound in itself, and maintainable on the most enlarged, humane, and generous principles of international law. It was asserted and maintained by the American plenipotentiaries at Ghent; and if, in the judgment of Mr. Russell, it suffered the fishing liberty to be brought into discussion, at least it did not *surrender the right.*

It was not acceded to by the British plenipotentiaries. Each party adhered to its asserted principle; and the treaty was concluded without settling the interest involved in it. Since that time, and after the original of Mr. Russell's letter of the 11th February, 1815, was written, the principle asserted by the American plenipotentiaries at Ghent, has been still asserted and maintained through two long and arduous negotiations with Great Britain, and has passed

the ordeal of minds of no inferior ability. It has terminated in a new and satisfactory arrangement of the great interest connected with it, and in a substantial admission of the principle asserted by the American plenipotentiaries at Ghent; by that convention of 20th October, 1818, which, according to the *duplicate* of Mr. Russell's letter, he foresaw in February, 1815, even while writing his learned dissertation against the right which he had been instructed not to surrender, and the only principle by which it could be defended.

At this time, and after all the controversy through which the American principle was destined to pass, and has passed, I, without hesitation, reassert, in the face of my country, the principle, which, in defence of the fishing liberties of this nation, was, at my suggestion, asserted by the American plenipotentiaries at Ghent.

I deem this reassertion of it the more important, because, by the publication at this time of Mr. Russell's letter, that plenipotentiary has not only disclaimed all his share in the first assertion of it, but has brought to bear all the faculties of his mind against it, while the American side of the argument, and the reasons by which it has been supported against arguments coinciding much with those of his letter, but advanced by British reasoners, are not before the public. The principle is yet important to great interests, and to the future welfare of this country.

When first suggested, it obtained the unanimous assent of the American mission. In their note of 10th November, 1814, to the British plenipotentiaries, which accompanied their first projet of a treaty, they said, "in answer to the declaration made by the Bri-"tish plenipotentiaries respecting the fisheries, the undersigned, "referring to what passed in the conference of the 9th August, can "only state, that they are not authorized to bring into discussion "any of the rights or liberties which the United States have here-"tofore enjoyed in relation thereto. From their nature, and from "the peculiar character of the treaty of 1783, by which they were "recognised, no further stipulation has been deemed necessary by "the government of the United States, to entitle them to the full "enjoyment of all of them." This paragraph was drawn up, and proposed to the mission by the member with whom Mr. Russell concurred in objecting to the proposal of an article confirmative of the fishing liberties and navigation of the Mississippi, and as a substitute for it. The mission unanimously accepted it: and the fishing liberties being thus secured from *surrender*, no article relating to them or to the Mississippi was inserted in the projet sent to the British mission.

But one of the objects of the negotiation was to settle the boundary between the United States and the British dominions, from the northwest corner of the Lake of the Woods westward. That boundary, by the treaty of 1783, had been stipulated to be, "from "the most northwestern point of the Lake of the Woods on a *due* "*west* course *to the river* Mississippi; and thence, down the mid-

dle of the Mississippi, to the thirty-first degree of north latitude ;" while, by the eighth article of the same treaty, it had been stipulated, that " the navigation of the river Mississippi, from its source to " the ocean, should forever remain free and open to the subjects of " Great Britain and the citizens of the United States."

The right of Great Britain and of the United States, at the time of the treaty of 1783, to make this stipulation with regard to the navigation of the Mississippi, might be, and afterwards was, questioned by Spain, then a possessor also of territories upon the same river, and indeed of both its banks, from its mouth to a higher latitude than that thus stipulated as the boundary of the United States. But, as, between Great Britain and the United States, there could, at the time of the conclusion of the treaty of 1783, be no possible question of the right of both to make the stipulation, the boundary line itself being in substance a concession of territory to the river, and down its middle to latitude 31, which Great Britain was undoubtedly competent to make, and the United States to receive. Now, the United States having received the cession and the boundary, with the right to navigate the river, with the express condition that the navigation of the river should forever remain free and open to British subjects, and having expressly assented to that condition, without considering it as infringing upon any right of Spain ; they could not, consistently with good faith, by acquiring afterwards the right of Spain, allege that this acquisition absolved them from the obligation of the prior engagement with Great Britain. There is, indeed, in Mr. Russell's letter, a hesitating argument to that effect ; the odious character of which is but flimsily veiled by its subtlety. The United States had always insisted upon their right of navigating the Mississippi, by force of the article of the treaty of 1783, and had obtained the acknowledgment of that right from Spain herself, many years before they acquired her territorial right by the purchase of Louisiana. With what front, then, could an American negotiator have said, after the latter period, to a British minister :—You have no right to the navigation of the Mississippi ; for although, on receiving from you a part of the river, we expressly stipulated that you should forever enjoy a right to its navigation, yet that engagement was a fraud upon the rights of Spain ; and although, long before we had acquired these rights of Spain, she had acknowledged *our* right to navigate the river, founded upon this very stipulation of which you now claim the benefit, yet I will now not acknowledge your right founded on the same stipulation. Spain, no party to the compact between you and me, after controverting it as infringing upon her rights, finally acceded to its beneficial application to us, as compatible with those rights. But we, who made the compact with you, having now acquired the adverse rights of Spain, will not allow you the beneficial use of our own compact. We first swindled and then bullied Spain out of her rights. by this eighth article of the treaty of 1783 ; and now, having acquired ourselves those rights, we plead them for holding our engagement with you for a dead letter.

This, and nothing more or less than this, is the substance of Mr. Russell's argument to show, that *perhaps* the United States were, by the acquisition of Louisiana, absolved from the obligation of the eighth article of the treaty of 1783, even before the war of 1812.

But, says Mr. Russell, the treaty of 1783 was made, under a belief of both parties, that it would leave Great Britain with a portion of territory upon the Mississippi, and *therefore* entitled to claim the right of navigating the river. But the boundary line of the treaty of 1783, was a line from the northwesternmost point of the Lake of the Woods, due west *to the Mississippi.* And after the treaty of 1783, but before the war of 1812, it had been found that a line due west, from the northwest corner of the Lake of the Woods, did not strike the Mississippi. Therefore, continues Mr. Russell, Great Britain could claim no *territorial* right to the navigation of the river; and therefore had no longer any claim to the benefit of the eighth article of the treaty of 1783.

To this it may be replied: First, that the British claim of right to navigate the Mississippi, was not founded solely on the territory which it was believed they would retain upon that river, by the boundary west from the Lake of the Woods. The eighth article of the treaty of 1783, was a separate and distinct article, stipulating the right of both nations to navigate the river, without any reference to boundary or to territory. But the boundary, the territory, and the right to navigate the river, were all, in that treaty, cessions from Great Britain to the United States. And, had it even been the intention of both parties, that Britain should cede the *whole* of her territories on the Mississippi, it was yet competent to her to reserve the right of navigating the river for her subjects, in common with the people of the United States, and competent for the United States to accept the cession, subject to that reservation. They did so, by the eighth article of the treaty. And in this point of view, the British right of navigating the river, within the American territory, was precisely similar to the American liberty of fishing within the British territorial jurisdiction, reserved by the third article of the same treaty.

But, secondly, the discovery that a line due west, from the northwesternmost corner of the Lake of the Woods, would not strike the Mississippi, had *not* deprived Great Britain of all claim to territory upon that river, at the time of the negotiation at Ghent. The line described in the treaty was, from the northwesternmost point of the Lake of the Woods, "on a *due west* course to the river *Mississippi.*" When it was found that the line *due west* did not touch the Mississippi, this boundary was annulled by the fact. It remained an unsettled boundary, to be adjusted by a new agreement. For this adjustment, the moral obligation of the parties was to adopt such a line as should approximate as near as possible to the intentions of both parties in agreeing upon the line for which it was to be substituted. For ascertaining this line, if the United States were entitled to the benefit of the words "on a due west course,"

Britain was equally entitled to the benefit of the words "to the river Mississippi." Both the demands stood on the same grounds. Before the war of 1812, three abortive attempts had been made by the parties to adjust this boundary. The first was by the treaty of 1794, when it was already conjectured, but not ascertained, that the line due west from the lake would not intersect the Mississippi. By the fourth article of the treaty of 1794, it was agreed that a joint survey should be made to ascertain the fact; and that, if, on the result of that survey, it should appear, that the west line would not intersect the river, the parties would proceed, "by amicable nego-"tiation, to regulate the boundary line in that quarter, according to "justice and mutual convenience, and in conformity to the intent "of the treaty of 1783." This survey was never made. The second attempt to adjust the line, was by the convention signed on the 12th of May, 1803, by Mr. King and lord Hawkesbury; the fifth article of which, after reciting the same uncertainty, whether a line drawn due west from the Lake of the Woods would intersect the Mississippi, provided that, instead of the said line, the boundary of the United States, in that quarter, should, and was declared to be, *the shortest line which could be drawn between the northwest point of the Lake of the Woods, and the nearest source of the river Mississippi.* This convention not having been ratified, the third attempt at adjustment had been made in the negotiation of Mr. Monroe and Mr. Pinkney, of 1806 and 1807; at which an article had been proposed and agreed to, that the line should be from the most northwestern point of the Lake of the Woods, to the 49th parallel of latitude, and from that point, due west, along and with the said parallel, *as far as the respective territories extend in that quarter.* And with that article was coupled another, as follows:

"It is agreed by the United States that his majesty's subjects "shall have, at all times, free access from his majesty's aforesaid "territories, by land or inland navigation, into the aforesaid terri-"tories of the United States, to the river Mississippi, with the "goods and effects of his majesty's said subjects, in order to enjoy "the benefit of the navigation of that river, as secured to them by "the treaty of peace, between his majesty and the United States, "and also by the third article of the treaty of amity, commerce, "and navigation, of 1794. And it is further agreed, that his ma-"jesty's subjects shall, in like manner, and at all times, have free "access to all the waters and rivers falling into the western side of "the river Mississippi, and to the navigation of the said river."

This negotiation was suspended, by a change of the British ministry, and was not afterwards resumed. But the following observations upon the two articles, contained in a letter from Mr. Madison to Messrs. Monroe and Pinkney, of 30th July, 1807, show how far Mr. Jefferson, then President of the United States, had authorized those commissioners to accede to them.

"Access by land or inland navigation from the British territo-"ries, through the territory of the United States to the river Mis-

" sissippi, is not to be allowed to British subjects, with their goods " or effects, unless such articles shall have paid all the duties, and " be within all the custom-house regulations, applicable to goods " and effects of citizens of the United States. An access through " the territory of the United States to the waters running into the " *western side* of the Mississippi, is under no modification whatev- " er to be stipulated to British subjects."

Such then was the state of things in relation to this interest in question, at the time when the war of 1812 broke out; and at the negotiation of Ghent, the same question of boundary again occurred for adjustment. The right of the British to a line from the Lake of the Woods *to the Mississippi*, had never been renounced: and, at the last negotiation between the parties, four years after the United States had acquired Louisiana, and with it all the Spanish rights upon the Mississippi, the British government, in assenting to take the 49th parallel of latitude, as a substitute for the line *to the Mississippi*, had expressly re-stipulated for the free navigation of the river, and free access to it from our territories; to both of which Messrs. Monroe and Pinkney had been explicitly authorized to accede.

Under this state of things, it had never been admitted by the British, nor could we maintain against them by argument, even that the Mississippi river was within our *exclusive* jurisdiction: for so long as they had a right by treaty to a line of boundary to that river, and consequently to territory upon it, they also had jurisdiction upon it; nor, consequently, could the instructions of 15th April, 1813, had they even been still in full force, have restricted the American commissioners from making or receiving a proposition, for continuing to the British the right of navigating the river, which they had enjoyed, without ever using it, from the time of the treaty of 1783, when the United States had received, by cession from them, the right of enjoying it jointly with them.

Bearing in mind this state of things, we are also to remember, that, in the conference of 19th August, 1814, and in the letter of that date, from the British to the American plenipotentiaries, (*See Wait's State Papers, vol. IX. pp.* 334 *and* 338,) they had claimed a new northwestern boundary line from *Lake Superior* to the Mississippi, and the free navigation of that river. To this the American commissioners had answered on the 24th of August, 1814: The undersigned perceive that the British government " propose, with- " out purpose specifically alleged, to draw the boundary line west- " ward, not from the Lake of the Woods, *as it now is*, but from " Lake Superior:" and they objected to it, as demanding a cession of territory.

The British plenipotentiaries, on the 4th September, 1814, replied:

" As the necessity for fixing some boundary for the northwestern " frontier has been mutually acknowledged, a proposal for a discus- " sion on that subject cannot be considered as a demand for a ces-

" sion of territory, unless the United States are prepared to assert
" that there is no limit to their territories in that direction, and that,
" availing themselves of the geographical error upon which that
" part of the treaty of 1783 was founded, they will acknowledge
" no boundary whatever, then, unquestionably, any proposition to
" fix one, be it what it may, must be considered as demanding a
" large cession of territory from the United States.

" Is the American government prepared to assert such an unli-
" mited right, so contrary to the evident intention of the treaty it-
" self? Or, is his majesty's government to understand that the
" American plenipotentiaries are willing to acknowledge the bound-
" ary from the Lake of the Woods *to the Mississippi*, (the arrange-
" ment made by a convention in 1803, but not ratified,) as that by
" which their government is ready to abide?

" The British plenipotentiaries are instructed to accept favour-
" ably such a proposition, or to discuss any other line of boundary
" which may be submitted for consideration."

I stop here for a moment, to observe how instinctively, if the expression may be allowed, both the parties in this correspondence recur to the treaty of 1783, with a consciousness that it was yet in full force, as an appeal for either in support of its claims. The expression in the above American note, applied to the boundary, "as it now is;" the reference of the British note to the geographical error in the treaty of 1783, and their willingness to discuss the arrangement of 1803, (the shortest line from the Lake of the Woods to the Mississippi,) both acknowledge the treaty of 1783 as the basis of all proposition and all argument, and as being yet in force for every thing which should not be otherwise provided for in the new treaty.

In their note of 21st October, 1814, the British commissioners said:

" On the subject of the fisheries, the undersigned expressed with
" so much frankness, at the conference already referred to, the
" views of their government, that they consider any further observ-
" ations on that topic as unnecessary at the present time.

" On the question of the boundary between the dominions of his
" majesty and those of the United States, the undersigned are led
" to expect, from the discussion which this subject has already un-
" dergone, that the northwestern boundary, from the Lake of the
" Woods to the Mississippi, (the intended arrangement of 1803,)
" will be admitted without objection."

Thus stood the parties and the subject, when, on the 10th of November, 1814, the American plenipotentiaries sent the first projet of a treaty to the British commissioners. It contained no article relating either to the fisheries or to the Mississippi; but, in the note which accompanied it, to meet the notification twice given on the part of the British government, that they did not intend to grant, without equivalent, the liberty of fishing within the British jurisdiction, the counter-notification, already noticed, was introduc-

ed, informing them that the American government did not consider the fishing liberties as forfeited by the war, and that they would remain in full force without needing any new grant to confirm them. At this stage of the negotiation, therefore, the American plenipotentiaries did actually pursue the first of those three *other* ways of proceeding, which Mr. Russell, in the postscript to the *original* of his letter of 11th February, 1815, says they might have taken, and to which he adds that he would have assented, namely, to contend for the continuance of the fishing privilege, notwithstanding the war, without saying any thing about the navigation of the Mississippi. It cannot but be surprising to find Mr. Russell, within three months after these events, writing privately to the Secretary of State, stating this as a course *other* than that which we had pursued, and that he would have assented to it if we had ; when it was the very course that we did pursue, and he had assented to it. We did contend, not for the *indestructibility*, as Mr. Russell terms it, of the treaty of 1783, but that, from its peculiar character, it was not abrogated by the mere occurrence of war. We never maintained that the treaty of 1783 was indestructible, or imperishable, but that the rights, liberties, and boundaries, acknowledged by it as belonging to us, were not abrogated by mere war. We never doubted, for example, that we might be compelled to stipulate a new boundary ; but that would have been, not as a consequence of mere war, but the effect of conquest, resulting from war. The difference between our principle and that of the British was, that they, considering the rights acknowledged as belonging to us by the treaty, as mere *grants*, held them as annulled by war alone ; while we, viewing them as rights existing before the treaty, and only acknowledged by it, could not admit them to be forfeited without our own assent. Britain might have recovered them by conquest ; but that could not be consummated without our acquiescence, tacit or expressed. Mr. Russell, who assented to our principle, and asserted it with us, now says he always thought the British principle was the true one. If the American mission, at that trying time, had acted upon it, he never would have prophesied the convention of October, 1818.

The eighth article of the projet of a treaty, sent by the American commissioners on the 10th of November, offered the boundary which had been proposed in 1807, a line north or south to latitude 49, and westward, on that parallel, as far as the territories of the two countries extended ; and said nothing about the Mississippi. But when, on the 26th of November, the British plenipotentiaries returned the projet, with their proposed amendments, they accepted the 49th parallel, westward, from the Lake of the Woods, for the boundary, but with the following addition to the article : " And it is further agreed, the subjects of his Britannic majesty " shall at all times have access, from his Britannic majesty's terri- " tories, by land or inland navigation, into the aforesaid territories " of the United States to the river Mississippi, with their goods,

" effects, and merchandise, and that his Britannic majesty's subjects " shall have and enjoy the free navigation of the said river."

It was to meet this demand that, at the conference of 1st December, the American plenipotentiaries proposed to strike out all those words, and to substitute the amendment contained in the protocol of that conference, already communicated to Congress. It was thus that the relation which Mr. Russell, within three months afterwards, so singularly professes not to perceive between the fishing liberties and the Mississippi navigation, not only naturally arose, but forced itself upon the American plenipotentiaries. They had saved the fishing liberties from *surrender*, as they had been specially instructed to do, by asserting that the treaty of 1783 had not been abrogated *ipso facto* by the war. Two days before receiving this counter projet, they had received from Washington a fresh instruction, expressly authorizing them to conclude a treaty on the basis of the *status ante bellum*, including, of course, the fishing liberty on one side, and the navigation of the Mississippi on the other. They could not, therefore, consistently with those instructions, either reject this British demand, or abandon to surrender the fisheries. They offered, therefore, the amendment containing the renewed acknowledgment of both; and they said to the British plenipotentiaries: We have told you that we consider all the rights, secured to us by the treaty of 1783, as still in force. What we demand, if you assent to it, we must yield in return. If, as we say, the treaty of 1783 is yet in force, you have the right of navigating the Mississippi, and we have the fishing rights and liberties unimpaired. If, as you say, the treaty is abrogated, how can you claim the right of navigating the Mississippi? You must admit the one, or not demand the other. We offer you the alternative of a new stipulated admission of both, or a total omission of both. We offer you in application the choice of our principle or of your own.

The British commissioners took the proposal for reference to their government, by whom it was immediately rejected. But, to show how anxious they were to obtain from us the surrender of our fishing liberties, and how cheaply they valued the right of navigating the Mississippi, as one of the last expedients of negotiation, they offered us an article agreeing that, after the peace, the parties would further negotiate "respecting the terms, conditions, and re- "gulations, under which the inhabitants of the United States" should again enjoy the fishing liberties, "*in consideration of a fair* " *equivalent*, to be agreed upon between his majesty and the said " United States, and granted by the said United States for such li- " berty aforesaid;" and a reciprocal stipulation with regard to the British right of navigating the Mississippi. As the parties after the peace would have been just as competent further to negotiate on these points, if so disposed, without this article as with it, its only effect would have been a mutual *surrender*, on the American side, of the fishing liberties, and on the British side, of the right to navigate the Mississippi; with this difference, that we should have sur-

rendered, in direct violation of our instructions, a real, existing, practical liberty, which, even in the war of our independence, had been deemed of the highest importance, and at its close had been, with infinite difficulty, secured ; a liberty, of which that portion of the Union, whom it immediately concerns, had been, from the time of the treaty of 1783, in the constant, real, and useful possession ; while the British would have surrendered absolutely nothing—a right which, by inference from their own principle, was abrogated by the war ; a right which, under the treaty of 1783, they had enjoyed for thirty years, without ever using it, and which, in all human probability, never would have been of more beneficial use to the British nation, than would be to the people of the United States the right of navigating the Bridgewater canal, or the Danube.

There was certainly an inconsistency on the part of the British government, in claiming a right to navigate the Mississippi, while asserting that the treaty of 1788 was abrogated by the war : and when pressed by us to say on what principle they claimed it without offering for it an equivalent, they said the equivalent was, their acceptance of the 49th parallel of latitude for the northwestern boundary, instead of the line, to which they were entitled by the treaty of 1783, *to the Mississippi*. As they gave up the line to the river, they said they had a right to reserve its navigation, and access to it for that purpose. They had said the same thing to Messrs. Monroe and Pinkney in 1807 ; and the principle had been assented to by them, with the subsequent sanction of President Jefferson. Still the whole argument leaned upon the continuing validity of the treaty of 1783 ; for the boundary line, as well as the Mississippi navigation, was null and void, if that treaty was abrogated. We replied to them, that, although we were willing to agree to the 49th parallel of latitude for the boundary, and thought it of mutual interest that the line should be fixed, we were yet not tenacious of it ; we could not agree to their article of mutual surrender, with a pledge of future negotiation ; but we would consent to omit the boundary article itself, and leave the whole subject for future adjustment. And to this they finally agreed.

The advantage of this to us was, that we came out of the war, without having *surrendered* the fishing liberties, as they had been enjoyed before, and stipulated at the treaty of 1783. We were still free to maintain, and we did, after the conclusion of the peace, effectively maintain. the existence of the right, notwithstanding the intervening war. The British government still insisted that the treaty of 1783 was abrogated by the war ; but when called upon to show, why then they treated the United States as an independent nation, and why in the treaty of Ghent they had agreed to four several commissions to ascertain the boundaries, "according to the true intent and meaning of that same treaty of 1783," they finally answered, that they considered our Independence, and the boundaries, as existing facts, like those of other nations, without reference to their origin. This left nothing but a dispute about words ;

for we applied the same principle to the fishing liberties of the third article, which they conceded with regard to the acknowledgement of Independence and to the bounderies. They considered the whole treaty of 1783 as a British grant. We considered it as a British acknowledgement. They never drew the nice distinction, attempted by Mr. Russell, between a perishable and imperishable part of the treaty, or admitted that it consisted of rights which they could not, and of privileges which they could resume without our consent. By their principle, they might have resumed the whole: and when they notified to us at Ghent, that they did not intend to *grant* us again the fishing liberties within their exclusive jurisdiction, but that they meant to leave us the right of fishing in the open sea, they gave us distinctly enough to understand that they were treating us with magnanimity, in not resuming the whole. There was in truth no difference in the principle. And Mr. Russell, in consulting his Vattel, to find that fishing rights were *juræ meræ facultatis*, and therefore imprescriptible, ought to have seen what that writer very explicitly says, not that they were rights which could not be *acquired* by long usage, but rights which could not be *lost* by non user. He ought also to have seen, what Vattel no less clearly lays down, that although a nation may appropriate to itself a fishery upon its own coasts and within its own jurisdiction, yet, "if it has once acknowledged the common right of other "nations to come and fish there, it can no longer exclude them "from it; it has left that fishery in its primitive freedom, at "least with respect to those who have been in possession of it." And he cites the herring fishery on the coast of England, as being common to them with other nations, because they had not appropriated it to themselves, *from the beginning*.

In perusing the letter of Mr. Russell, whether original or duplicate, I cannot but reflect with gratitude to Providence upon the slender thread by which the rights of this nation to the fisheries were in fact suspended at the negotiation of Ghent. Positive and precise as our instructions were, not to *surrender* them, if Mr. Russell had disclosed at Ghent the opinions avowed in either version of his letter, if he had so broadly asserted and so pertinaciously maintained his conviction of the utter worthlessness of the fisheries, in comparison with the exclusion of the British from a mere phantom of right to navigate the Mississippi, which they had always enjoyed without use; without benefit to themselves or injury to us; if he had so learnedly disserted to prove that the treaty of 1783 was totally and absolutely abrogated by the war; if he had so thoroughly inverted the real state of the question, and painted it in such glowing colours as a sacrifice of deep, real interests of the West to a shallow, imaginary interest of the East; if, with that perseverance which is the test of sincerity, he had refused to sign the proposal determined upon by the majority of his colleagues, and given them notice that he should transmit to his government the vindication of himself and his motives for differing from them;

and, above all, if another mind could have been found in the mission, capable of concurring with him in those views, it would at least have required of the majority an inflexibility of fortitude, beyond that of any trial by which they were visited, to have persevered in their proposal. Had they concurred with him in his opinion of the total abrogation of the treaty of 1783, by the mere fact of the war, the fisheries in the Gulf of St. Lawrence, on the coast of Labrador, and to an indefinite extent from the Island of Newfoundland, were lost to the United States forever, or at least till the indignant energy of the nation should have recovered, by conquest, the rights thus surrendered to usurpation. In notifying to us that the British government intended not to renew the grant of the fisheries within British jurisdiction, they had not said what extent they meant to give to these terms. They had said they did not mean to extend it to the right of the fisheries, generally, or *in the open seas*, enjoyed by all other nations. (*See Letter of the American Commissioners to the Secretary of State of 12th August*, 1814. *Wait's State Papers, vol. 9, p.* 321.) But there was not wanting historical exposition of what Great Britain understood by her exclusive jurisdiction as applied to these fisheries. In the 12th article of the treaty of Utrecht, by which Nova Scotia or Acadia had been ceded by France to Great Britain, the cession had been made "in "such ample manner and form, that the subjects of the most "Christian King shall hereafter be excluded from all kind of fish-"ing in the said seas, bays, and other places on the coasts of Nova "Scotia; that is to say, on those which lie towards the east, within "THIRTY LEAGUES, beginning from the island commonly called "Sable, inclusively, and thence along towards the southwest."

By the thirteenth article of the same treaty, French subjects were excluded from fishing on any other part of the coast of the Island of Newfoundland, then from Cape Bonavista northward, and then westward to Point Riche. By the fifteenth article of the treaty of Utrecht, between Great Britain and Spain, certain rights of fishing *at* the Island of Newfoundland, had been reserved to the Guipuscoans, and other subjects of Spain; but in the eighteenth article of the treaty of peace between Great Britain and Spain, of 1763, his Catholic majesty had desisted, "as well for himself as for his successors, from all pretension which he might have formed in favour of the Guipuscoans and other his subjects, to the right of fishing IN THE NEIGHBOURHOOD of the Island of Newfoundland." In these several cases, it is apparent that Great Britain had asserted and maintained an exclusive and proprietary jurisdiction over the whole fishing grounds of the Grand Bank, as well as on the coast of North America, and in the Gulf of St. Lawrence. Nor are we without subsequent indications of what she would have considered as her exclusive jurisdiction, if a majority of the American commission at Ghent had been as ready as Mr. Russell declares himself to have been, to subscribe to her doctrine, that all our fishing liberties had lost, by the war, every vestige of right.

For, in the summer of 1815, the year after the conclusion of the peace, her armed vessels on the American coast warned all American fishing vessels not to approach within SIXTY MILES of the shores.

It was this incident which led to the negotiations which terminated in the convention of 20th October, 1818. In that instrument the United States have *renounced forever*, that part of the fishing liberties which they had enjoyed or claimed in certain parts of the exclusive jurisdiction of the British provinces, and within *three marine miles* of the shores. This privilege, without being of much use to our fishermen, had been found very inconvenient to the British: and, in return, we have acquired an enlarged liberty, both of fishing and drying fish, within the other parts of the British jurisdiction, *forever*. The first article of this convention affords a signal testimonial of the correctness of the principle assumed by the American plenipotentiaries at Ghent; for, by accepting the express renunciation of the United States, of a small portion of the privilege in question, and by confirming and enlarging all the remainder of the privilege *forever*, the British government have implicitly acknowledged that the liberties of the third article of the treaty of 1783 had *not* been abrogated by the war, and have given the final stroke to the opposite doctrine of Mr. Russell. That words of perpetuity in a treaty cannot give that character to the engagements it contains, is not indeed a new discovery in diplomatic history; but that truism has as little concern with this question, as the annulment of our treaty of 1778 with France, so aptly applied to it in his letter. It is not, therefore, the word *forever*, in this convention, which will secure to our fishermen, for all time, the liberties stipulated and recognised in it; but it was introduced by our negotiators, and admitted by those of Great Britain as a warning that we shall never consider the liberties secured to us by it, as abrogated by mere war. They may, if they please, in case of a war, consider the convention as abrogated, but the privileges as existing, without reference to their origin. But they and we, I trust, are forever admonished against the stratagem of demanding a surrender, in the form of notifying a forfeiture. They and we are aware, forever, that nothing but *our own renunciation* can deprive us of the right.

The second article of this same convention affords a demonstration equally decisive, how utterly insignificant and worthless, in the estimation of the British government, was this direfully dreaded navigation of the Mississippi. The article gives us the 49th parallel of latitude for the boundary, and neither the navigation of the river, nor access to it, was even asked in return.

These are conclusive facts—facts appealing not to the prejudices or the jealousies, but to the sound sense and sober judgment of men. Without yielding at all to Mr. Russell, in my "trust in God and the valour of the West," I have an equal trust in the same divine being, as connected with the *justice* of the West. I have the

perfect and undoubting reliance, that to the clear-sighted intelligence of the western county, the gorgons, and hydras, and chimeras dire, of Mr. Russell's imagination, raised by incantation from the waters of the Mississippi, will sink as they rose, and be seen no more. Without professing to sacrifice any of those ties of duty and allegiance, which bind me to the interests of my native State, I cannot allow Mr. Russell's claim to a special ardour for the welfare of the West, to be superior to my own, or to that of the deceased, or of the living colleague, with whom I concurred, without mental reservation, in the measure subscribed to, and denounced by, Mr. Russell. We were all the ministers of the whole Union; and sure I am, that every member of the majority would have spurned with equal disdain the idea of sacrificing the interest of any one part of the Union to that of any other, and the uncandid purpose of awakening suspicions at the source of their common authority here, against the patriotism and integrity of any one of his colleagues.

I shall conclude with a passing notice of the three alternatives, which in the postscript to the original of his letter of 11th February, 1815, he says, we might have taken, instead of that which, as he alleges, we, against his will, did do. We had, says he, three other ways of proceeding:

"First. To contend for the indestructibility of the treaty of 1783, "thence inferring the continuance of the fishing privilege, without "saying any thing about the navigation of the Mississippi, which "would have reserved our right of contesting this navigation, on "the grounds I have mentioned, specially applicable to it. Se- "condly, To have considered the treaty at an end, and offered a "reasonable equivalent, *wherever it might be found*, for the fishing "privilege." Thirdly, To have made this liberty a sine qua non "of peace, as embraced by the principle of status ante bellum.

"To either of these propositions" (he adds,) "I would have as- "sented. But I could not consent to grant or revive the British "right to the navigation of the Mississippi."

He could not consent! He did consent: see his name subscribed to the letter from the American to the British plenipotentiaries of 12th December, 1814—p. 44 of the message of 25th February last.

It is, indeed, painful to remark here, and throughout this letter of Mr Russell, how little solicitude there is discoverable, to preserve even the appearance of any coincidence between his real sentiments and his professions: half his letter is an argument in form to prove, that the treaty of 1783 was abrogated by the war; yet, he says, he would have assented to contend for its *indestructibility*, so long as it applied only to the defence of the fisheries, reserving his special grounds of objection to its being applied to the navigation of the Mississippi. I have shown, that the indestructibility of the treaty of 1783 never was asserted by any of the American commissioners; but, that the principle that it had not

been abrogated by the war, and that none of the rights stipulated and recognised in it, as belonging to the people of the United States, could be abrogated, but by their own renunciation, was at first assumed in defence of the fisheries only, and without saying any thing of the Mississippi. When, therefore, the demand for the navigation of the Mississippi came from the British plenipotentiaries, Mr. Russell's special objections to the application of our principle, in favour of our demand, might have been urged. But what were these special objections? I have shown, that they were our own wrong—fraud and extortion upon Spain, to justify perfidy to Great Britain. Mr. Russell never did allege these objections at Ghent, and, if he had, a majority of the American mission would, assuredly, have been ashamed to allege them to the British government.

The second way of proceeding, to which Mr. Russell says he would have assented was to consider the treaty of 1783 at an end, and offer for the fishing privilege, a reasonable equivalent, *wherever it might be found*—and where would he have found it? He will not affirm that we had authority to offer any equivalent whatever—we had been specially instructed *not to surrender them.* He says he would have surrendered, and purchased them at a reasonable price again.

The third substitute, to which he says he would have assented, is the strangest of all. He says he would have made it a sine qua non of peace, as embraced by the principle of status ante bellum.

A sine qua non for the status ante bellum! And yet he *could not consent* to grant or revive the British right to the navigation of the of the Mississippi in order to procure or preserve the fishing liberty; when the status ante bellum would have given them not only the whole treaty of 1783, but the permanent articles of the treaty of 1794; not only the navigation of the Mississippi, but unrestrained access to our territories and intercourse with our Indians.

I have shown that the most aggravated portion of Mr. Russell's charge against his colleagues of the majority, that of wilful violation of positive and unequivocal instructions, by a senseless offer to the British plenipotentiaries, sacrificing an important Western to a trifling Eastern interest, is not only utterly destitute of foundation, but that it was not even made, nay, more, that it was distinctly contradicted by the letter really written by Mr. Russell at Paris, on the 11th of February, 1815. Into Mr. Russell's motives for introducing it into the duplicate of that letter, delivered by himself at the Department of State, to be communicated to the House as the letter called for by their resolution, I shall not attempt to penetrate; having, as I trust, equally shown that the charges implied in the real letter are as groundless as their aggravations in the duplicate. The professions of unfeigned respect for the integrity, talents, and judgment, of those colleagues whose conduct is, in the same letter, represented as so weak, absurd, and treacherous, I can, for my own part, neither accept nor reciprocate. To have

been compelled to speak as in these remarks I have done, of a person distinguished by the favour of his country, and with whom I had been associated in a service of high interest to this Union, has been among the most painful incidents of my life. In the defence of myself and my colleagues, against imputations so groundless in themselves, at first so secretly set forth and now so wantonly promulgated before the legislative assembly of the nation, it has been impossible entirely to separate the language of self-vindication from that of reproach. With Mr. Russell I can also rejoice that the proposal offered on the 1st of December, 1814, was rejected by the British government, not because I believe it now, more than I did then, liable to any of the dangers and mischiefs so glaring in the vaticinations of Mr. Russell, but because both the interests to which it relates have since been adjusted in a manner still more satisfactory to the United States. I rejoice, too, that this adjustment has taken place before the publication of Mr. Russell's letter could have any possible influence in defeating or retarding it. The convention of 20th October, 1818, is the refutation of all the doctrines of Mr. Russell's letter, to which there can be no reply. It has adjusted the fishing interest upon the principle asserted by the American mission at Ghent, but disclaimed by Mr. Russell. It has given us the boundary of latitude 49, from the Lake of the Woods westward, and it has proved the total indifference of the British government to the right of navigating the Mississippi, by their abandonment of their last claim to it, without asking an equivalent for its renunciation.

With regard to the magnitude of the fishing interest which was at stake during the negotiation at Ghent, I believe the views disclosed in Mr. Russell's letter as incorrect as the principles upon which he would have surrendered it. The notification of exclusion was from all fisheries within exclusive British jurisdiction. I have shown that, historically, Great Britain had asserted and maintained exclusive proprietary jurisdiction over the whole. Had we tamely acquiesced in her principle of forfeiture, without renunciation, we should soon have found that her principle of exclusion embraced the whole. That a citizen of Massachusetts, acquainted with its colonial history, with the share that his countrymen had had in the *conquest* of a great part of these fisheries, with the deep and anxious interest in them taken by France, by Spain, by Great Britain, for centuries before the American revolution; acquainted with the negotiations of which they had been the knot, and the wars of which they had been the prize, between the three most powerful maritime nations of modern Europe; acquainted with the profound sensibility of the whole American Union, during the revolutionary war, to this interest, and with the inflexible energies by which it had been secured at its close; acquainted with the indissoluble links of attachment between it and the navigation, the navy, the maritime defence, the national spirit and hardy enterprise of this great republic; that such a citizen, stimulated to the discharge of duty by

a fresh instruction from his government, given at the most trying period of the war upon the very first rumour of an intention, on the part of Great Britain, to demand its surrender, *not to surrender it*, sooner to break off the negotiation than surrender it; that such a citizen, with the dying words of Lawrence, "Don't give up the "ship," still vibrating on his ear, should describe this interest "as "totally unnecessary for us for subsistence or occupation," and affording, "in no honest way, either commercial facility or political "advantage," as "the doubtful accommodation of a few fishermen "annually decreasing in number," is as strange and unaccountable to me as that he should deliberately sit down, two months after the treaty was concluded, and write to his government a cold-blooded dissertation to prove that there was nothing, absolutely nothing, in the principle upon which he and his colleagues had rested its future defence, and that he considered the fishing liberty "to be entirely "at an end, without a new stipulation for its revival."

Such were not the sentiments of a majority of the American commissioners at Ghent; such were, particularly, not the sentiments of the writer of these remarks. He reflects, with extreme satisfaction, upon that deep and earnest regard for this interest manifested at that time, by the executive government of the United States, in the positive and unqualified instruction of 25th June, 1814, to the commissioners, on no consideration whatever *to surrender the fisheries*. He rejoices that this instruction was implicitly obeyed; that the nation issued from the war with all its rights and liberties unimpaired, preserved as well from the artifices of diplomacy, as from the force of preponderating power upon their element, the seas; and he trusts that the history of this transaction, in all its details, from the instruction *not to surrender the fisheries*, to the conclusion of the convention of 20th October, 1818, will give solemn warning to the statesmen of this Union, in their conflicts with foreign powers, through all future time, never to consider any of the liberties of this nation as abrogated by a war, or capable of being extinguished by any other agency than our own express renunciation.

JOHN QUINCY ADAMS.

May 3, 1822.

THE TRIPLICATE.

In the National Gazette, of 10th May, 1822, printed at Philadelphia, there was published, headed "For the National Gazette," a "Letter of Jonathan Russell, Esq. to the Hon. the Secretary of State, in relation to the negotiations at Ghent." It was dated Paris, 11th February, 1815, not marked "*private*," and in the same paper was accompanied by the following article, under the editorial head:

NEGOTIATIONS AT GHENT.

The call made in Congress for a particular letter of Jonathan Russell, Esq. on the subject of the negotiations at Ghent, the supposed object of that call, and the extraordinary tenour of the President's reply to it, have excited a general curiosity respecting the contents of the document, about which an air of mystery and pregnant importance was thus thrown. The President stated in his message, as our readers will recollect, that he had found the letter among his private papers, marked "private," by the writer, whose view of his own conduct and that of his colleagues was such as would demand from the two surviving members of the Ghent mission, a reply containing their view of the transactions in question; which reply, upon the principles of equal justice, ought to be communicated at the same time to Congress. The President stated, also, that he had deposited the original of the letter in the Department of State, with instructions to deliver a copy to any person who might be interested. ☞[A copy has come into our hands, for the exactness of which we can vouch, and which we publish entire, this afternoon;] and as the House of Representatives has repeated the call for the document, in terms that have empowered the President to submit with it whatever he pleased of a relevant purport, we may expect to be soon able to lay before our readers, the communication, in the nature of an answer, which the Secretary of State had expressed a desire to be permitted to offer.

Most persons will, we apprehend, find that the ideas respecting the character of the letter, which they had been led from what has passed, to form, are in a degree erroneous. Mr. Russell has not arraigned the conduct or questioned the motives of his colleagues, who composed the majority on the point discussed—on the contrary, he has, we observe, emphatically borne testimony, towards the end of the letter, to their integrity, talents, and judgment; and his purpose seems to have been, not to prove that they erred, so much as to furnish a satisfactory apology for his having differed with them in opinion. If he marked the letter "private," it is not thence to be inferred that he meant it to remain *secret* for them, or absolutely; but merely that it should not be considered as a part of the public and official record of the negotiations, or otherwise than his

separate and personal explanation of his dissent in a particular and important transaction of the case. We would remark that such explanations are by no means rare in the annals of diplomacy.—☞ [We learn, from good authority, that the first call in the House of Representatives, for the correspondence which led to the Treaty of Ghent, was not made at the instigation of Mr. Russell, nor in consequence of communications with him ; and that in like manner, he had no share in the call for the private letter.] The attention of Mr. Floyd was attracted to it, we presume, by the following passage of a short extract of a letter from Mr. Russell to the Secretary of State, contained in the correspondence which the President submitted to Congress on the 25th of February.

"As you will perceive by our despatch to you, of this date, that a majority only of the mission was in favour of offering to the British plenipotentiaries, an article confirming the British right to the navigation of the Mississippi, and ours to the liberty as to the fisheries, it becomes me in candour to acknowledge, that I was in the minority on that question. I must reserve to myself the power of communicating to you, hereafter, the reasons which influenced me to differ from a majority of my colleagues on that occasion ; and if they be insufficient to support my opinion, I persuade myself they will at least vindicate my motives."

That his letter may be the better understood, we shall proceed to quote that part of the official despatch to which he refers, which relates to the article mentioned. The despatch is dated Ghent, 25th December, 1814 ; and is among the papers communicated to Congress.

"At the first conference on the 8th of August, the British plenipotentiaries had notified to us, that the British government did not intend, henceforth, to allow to the people of the United States, without an equivalent, the liberties to fish, and to dry and cure fish, within the exclusive British jurisdiction, stipulated, in their favour, by the latter part of the third article of the treaty of peace of 1783. And, in their note of the 19th August, the British plenipotentiaries had demanded a new stipulation to secure to British subjects the right of navigating the Mississippi ; a demand, which, unless warranted by another article of that same treaty of 1783, we could not perceive that Great Britain had any colourable pretence for making. Our instructions had forbidden us to suffer our right to the fisheries to be brought into discussion, and had not authorized us to make any distinction in the several provisions of the third article of the treaty of 1783, or between that article and any other of the same treaty. We had no equivalent to offer for a new recognition of our right to any part of the fisheries, and we had no power to grant any equivalent which might be asked for it by the British government. We contended that the whole treaty of 1783, must be considered as one entire and permanent compact, not liable, like ordinary treaties, to be abrogated by a subsequent war between the parties to it ; as an instrument, recognising the rights and liberties enjoyed by the people of the United States, as an independent nation, and containing the terms and conditions on which the two parts of one empire had mutually agreed, thenceforth to constitute two, distinct and separate nations. In consenting by that treaty, that a part of the North American continent should remain subject to the British jurisdiction, the people of the United States had reserved to themselves the liberty, which they had ever before enjoyed, of fishing upon that part of the coasts, and of drying and curing fish upon the shores ; and this reservation had been agreed to by the other contracting party. We saw not why this liberty, then no new grant, but a mere recognition of a prior right, always enjoyed, should be forfeited by a war, any more than any other of the rights of our national independence,

or why we should need a new stipulation for its enjoyment, more than we needed a new article to declare that the king of Great Britain treated with us as free, sovereign, and independent States. We stated this principle, in general terms, to the British plenipotentiaries, in the note which we sent to them, with our projet of the treaty; and we alleged it as the ground upon which no new stipulation was deemed by our government necessary to secure to the people of the United States, all the rights and liberties stipulated in their favour by the treaty of 1783. No reply to that part of our note was given by the British plenipotentiaries; but, in returning our projet of a treaty, they added a clause to one of the articles, stipulating a right for British subjects to navigate the Mississippi. Without adverting to the ground of prior and immemorial usage, if the principle were just, that the treaty of 1783, from its peculiar character, remained in force in all its parts, notwithstanding the war, no new stipulation was necessary to secure to the subjects of Great Britain, the right of navigating the Mississippi, as far as that right was secured by the treaty of 1783; as, on the other hand, no stipulation was necessary to secure to the people of the United States the liberty to fish, and to dry and cure fish within the exclusive jurisdiction of Great Britain.

"If they asked the navigation of the Mississippi, as a new claim, they could not expect we should grant it without an equivalent; if they asked it because it had been granted in 1783, they must recognise the claim of the people of the United States, to the liberty to fish, and to dry and cure fish, in question. To place both points beyond all further controversy, a majority of us determined to offer to admit an article confirming both rights: or, we offered at the same time, to be silent in the treaty upon both, and to leave out altogether the article defining the boundary from the Lake of the Woods westward. They finally agreed to this last proposal, but not until they had proposed an article stipulating for a future negotiation for an equivalent to be given by Great Britain, for the navigation of the Missisippi, and by the United States, for the liberty as to the fisheries within British jurisdiction. This article was unnecessary, with respect to its professed object, since both governments had it in their power, without it, to negotiate upon these subjects if they pleased. We rejected it, although its adoption would have secured the boundary of the 49th degree of latitude, west of the Lake of the Woods, because it would have been a formal abandonment, on our part, of our claim, to the liberty as to the fisheries, recognised by the treaty of 1783."

For the more complete comprehension of the foregoing extract, and Mr. Russell's letter, we copy the article, and two extracts from the instructions of the American commissioners.

Article offered by the American to the British Plenipotentiaries at Ghent, on the 1st of December, 1814.

"The inhabitants of the United States shall continue to enjoy *the liberty* to take, dry, and cure fish in places within the *exclusive jurisdiction* of Great Britain, as secured by the former treaty of peace; and the navigation of the river Mississippi, within the exclusive jurisdiction of the United States, shall remain free and open to *the subjects of Great Britain*, in the manner secured by that treaty; and it is further agreed *that the subjects of his Britannic majesty shall at all times have access, from such place as may be selected for that purpose, in his Britannic majesty's aforesaid territories, westward and within three hundred miles of the Lake of the Woods, in the aforesaid territories of the United States, to the river Mississippi, in order to enjoy the benefit of the navigation of that river, with their goods, effects, and merchandise, whose importation into the said States, shall not be entirely prohibited, on the payment of the same duties as would be payable on the importation of the same into the Atlantic ports of the said States, and on conforming with the usual custom-house regulations.*"

☞ [Extract of a letter from Mr. Monroe, Secretary of State, to the American Commissioners.

Department of State, April 15, 1813.

"The article in the treaty of 1794, which allows British traders from Canada and the North West Company, to carry on trade with the Indian tribes, within the limits of the United States, *must not be renewed.* The *pernicious* effects of this privilege have been most *sensibly felt* in the present war, by the *influence which it gave to the traders* over the Indians, *whose whole force* has been wielded *by means thereof* against the inhabitants of *our Western States* and territories. You will *avoid also* any stipulation which might restrain the United States from increasing their naval force to any extent they may think proper, *on the lakes held in common;* or *excluding* the British traders from the navigation of the lakes *and rivers, exclusively within our own jurisdiction.*"]

Extract of a letter from the same to the same, 25th June, 1814.

"Information has been received from a quarter deserving attention, that the late events in France have produced such an effect on the British government, as to make it probable that a demand will be made at Gottenburg, to surrender our *right* to the fisheries —to abandon *all* trade beyond the Cape of Good Hope, and to *cede Louisiana to Spain.* We cannot conceive that such a demand will be made. Should it be, you will, of course, treat it as it deserves. These *rights* must not be brought into discussion. If insisted on, *your negotiations will cease.*"

"We must confess that we consider the general views of Mr. Russell, which are only exhibited, as for the most part sound, and believe with him both that the treaty of 1783 was abrogated by the war, and that much mischief might have resulted from allowing the British access to the Mississippi from the interior, which was offered and rejected. But we must wait to see in what lights the subject has been placed in the communication of Mr. Adams. It has been supposed, and indeed asserted with some exultation, that the disclosure of this affair would affect the good repute of that gentleman with the country, as a staunch and enlightened patriot. It may be confidently believed, however, that those who have predicted or desired this result, will be disappointed. If he committed even an error of judgment, it was in common with Mr. Gallatin and Mr. Bayard, men whose diffusive and deep love of country, and whose pervading sagacity and powers of just reflection are so far acknowledged on one side or the other by the political parties of the Union, that they may be declared to be fully admitted. And when the case shall be studied in all its circumstances and details of reasoning, it will probably be universally acknowledged, by candid minds, to be one as to which the course pursued by the majority of the commissioners should not be deemed inconsistent with the best dispositions that could distinguish American negotiators. We hold the rejection by the British commissioners of the article offered to them, to be a fortunate incident, but at the same time, we think it entitled to no small weight in the question of the judgment which ought, at this distance of time, to be pronounced on the proposal."

In this article, the voucher for the exactness of the copy—the assertion *from good authority*, that Mr. Russell had had no share

in either of the calls of the House of Representatives of 17 Jan. 1822, for the Ghent documents, or of 19 April, 1822, for his own letter, and above all, the extract from the instructions of 15 April, 1813, which had never before been published, but of which Mr. Russell had recently obtained, from the records of the Department of State, two copies, were undoubted indications that the publication came from Mr. Russell. The editor of the Gazette has indeed since stated, that the editorial article was written by himself; but it was evidently written upon representations directly or indirectly from Mr. Russell. The *opinions* expressed in the editorial article were his own, but the facts for which he vouched, and the extract from the cancelled instructions, could have been furnished him only by, or at the instance of, Mr. Russell.

The copy of the letter was *not* exact, as will be seen by the following extracts from a subsequent editorial article in the National Gazette of 25 May, 1822.

"We insert, to-day, the reply of the hon. John Q. Adams, Secretary of State, to Mr. Russell's communications to the government respecting the negotiations at Ghent."

"Upon the merits of the main argument, we do not intend, and indeed have not room, to express an opinion to-day; but we may remark at once, that so far as regards the proposal to allow the British the free navigation of the Mississippi, Mr. Adams has placed his conduct and views beyond the reach of calumny and misapprehension for the future. It will be seen that Mr. Jefferson, in 1807, then President of the United States, expressly authorized Messrs. Monroe and Pinkney, who were negotiating in London, to accede to a stipulation proposed by the British government for the navigation of that river, and access to it from our territories, on submitting to the duties and custom-house regulations applicable to goods and effects of citizens of the United States.

"The pamphlet of documents printed for Congress embraces not only the original letter of Mr. Russell, as received by Mr. Monroe, but the paper which Mr. Russell on the 22d April last, left at the Department of State, as the duplicate of that letter, and which contains passages not to be found in the original. In publishing the letter of Mr. Russell, we undertook to vouch for its exactness as a copy, circumstances having led us fully to believe this to be the case. On comparing it, however, with the printed original, we found the following variations in the text.

"Quotation from our publication: 'From the year 1783 to the 'commencement of the present war, the actual advantages derived 'from the fishing privilege by the people of the United States, 'were, according to the best information that we could obtain on 'the subject,' &c. The text of the original is—*I can obtain* on the subject. Again, our printed text is, 'because by conceding in it '(the proposed article) to Great Britain the navigation of the Mis-'sissippi, we directly violated our instructions, and we offered,' &c. The phrase, *we directly violated our instructions*, is not in the

original. In the postscript of the letter in our text, it is said, 'we had three ways of proceeding;' the text laid before Congress is, 'we had three *other* ways of proceeding.'

"With respect to the variations between the text of the letter which we published and that of the original, we would remark that they are likewise in the duplicate, deposited in the Department of State."

The most remarkable circumstances attending this publication of the letter in the National Gazette, were the time selected for the purpose, and the interpolations still retained, while nearly all those of the duplicate were dismissed. The letter in the Gazette was, with the exception of about two lines, the original letter entirely restored; but one of those lines was "we directly violated our instructions" and its retention was necessarily connected with the citation of the cancelled paragraph, published as part of the accompanying editorial article. For those were the instructions alleged to have been violated; yet this was *after* I had shown to Mr. Russell, and he had read at the Department of State, the despatch from the Secretary of State, which had revoked those instructions. It was apparent also that Mr. Russell had, before he left Washington, prepared himself for this publication at Philadelphia, and at a time when, from the President's message in answer to the call from the House of the 19th of April, it was probable the letter would not be communicated to the House at all.

From the Boston Statesman of 27 June, 1822.

MR. RUSSELL'S REPLY TO MR. ADAMS.

It was not until the 30th ult. that I received a copy of the communication which had been made, by the President, to the House of Representatives, on the 7th of that month. This communication consists of a letter which I had written from Paris on the 15th of February, 1815, and addressed to the then Secretary of State, of a paper left by me at the Department of State, on the 22d of April last, and of the remarks of Mr. Adams *on both*. I say on both—for, notwithstanding that the report of Mr. Adams to the President, speaks only of his remarks on the paper deposited by me at the Department, as just mentioned, yet a considerable portion of those remarks apply to the letter received at that Department in 1815. The message of the President of the 4th ult. indeed, evidently considers the contemplated report of Mr. Adams to be confined to that letter only. It is apparent, from the whole tenor of that message, that the letter which Mr. Monroe received from Paris, was alone the document called for, and to be communicated to the House. I was surprised, therefore, on receiving the printed documents, to find that either more had been called for on the 6th, or, without being embraced by such call, had been communicated on the 7th of May, than had been signified by that message.

I had left Washington on the 5th, in the belief that, at so late a moment of the session, no call, in reference to that message, would be made, or, if made, that it would produce the letter only received from Paris, with the corresponding report of the Secretary of State. My surprise was not diminished when, on reading the remarks of Mr. Adams, I discovered that they mainly owed their existence and character to a paper, which had been considered not to be the paper called for, and which had been obtruded on the House, after my departure, at the special instance of Mr. Adams himself, and to afford him an opportunity of giving another specimen of his taste and temper to the public.

Mr. Adams, on the 6th of May, the very next day after my departure from Washington, went to the House of Representatives, and there, in person, sought for a member who would consent to make the call which was necessary for the *official* publication of his *personal* remarks. To one member from Massachusetts, at least, he had applied in vain, before he finally succeeded in his object. It would seem that the evidence furnished by these facts ought to have been sufficient, at least, to deter him from accusing others of "a wanton promulgation before the legislative assembly of the nation."

For the previous calls, whatever might have been the motive for making them, I am not responsible. With the gentleman who made the call on the 17th of January, for the correspondence which led to the treaty of Ghent, not already made public, I had not the least personal acquaintance at the time, nor had I before that call was actually made, the slightest intimation, directly or indirectly, of any intention of making it.

In an interview with Mr. Adams, at his house, a short time afterwards, he said, in reference to that call, that a letter had been found from me, in the archives of State, which might be considered to be embraced by it. He desired to know if I was willing to have it communicated. I replied that I had no distinct recollection of the letter to which he alluded, and that I wished to see it before I gave my consent to its publication. He acquiesced, and I repaired accordingly to the Department of State. I found the letter to which Mr. Adams had referred, to be that which I had written at Ghent, on the 25th of December, 1815, and which announced the fact of my having been in the minority on the proposition relative to the navigation of the Mississippi and the fishing privilege, and intimated my intention of communicating the reasons which had influenced my conduct on that occasion. I could perceive no good cause why I should object to the communication of such a letter, and I consented that the part which related to the subject just mentioned, should, with the approbation of Mr. Adams, be communicated. Mr. Adams at that time expressed no dissatisfaction that I had written such a letter, nor made any comment on its contents. This is all the participation which I had, directly or indirectly, with the call of the 17th of January.

The member who had made that call, made also the call of the 19th of April. This second call was obviously occasioned by the extract of my letter of the 25th of December, 1814,* above mentioned, which the first call had brought forth. To that member I had never communicated, by transcript or otherwise, the contents of my letter written at Paris, for which he called. I had refused to others any account or copy of that letter, for which they had applied to me, as I believed, for publication. As a reason for thus refusing, I uniformly assigned the necessity, in my opinion, of the previous consent and approbation of the constituted authorities for the regular publication of a letter written by me while in the public service, to one of those authorities, and in relation to that service.

All the participation which I had in this call was, to leave at the Department of State, in consequence of an *application* from *that Department*, the paper which has since been published as a duplicate. The simple facts are these: on the morning of the 20th of April, a gentleman employed in the Department of State called on me at my lodgings and inquired if I could furnish a duplicate of the letter which had been called for. I intimated a reluctance to communicating any thing as a duplicate. He observed, that it need not be presented as such to the House, but wished to have it so presented to the Department. This is, in substance, what was said on that occasion.

On the 22d, I called at the Department of State—Mr. Adams was not there—and I left the paper with the gentleman who had applied to me for it. The word "duplicate" had indeed been written on it, in consequence of his suggestion as above stated; but I gave no further intimation, much less any assurance, that it was so. He made no inquiry, and I made no comment. I observed merely, that I left it for the examination of Mr. Adams; and that I was indifferent whether it was communicated, under the call of the House, or not, as the letter called for; but if *not so communicated*, I expressed the expectation that it would be returned to me. He received it accordingly.

A few days afterwards I again visited the Department of State,

* *The following is the extract alluded to:*

Extract of a letter from Jonathan Russell, esq to the Secretary of State, dated at Ghent, 25th of December, 1814, and communicated to the House of Representatives, by the President, on the 21st of February, 1822.

"*My necessary occupation, at this moment, in aiding my colleagues to prepare our joint despatches, puts it out of my power to furnish you with any details or observations exclusively my own.*

"*As, however, you will perceive by our despatch to you of this date, that a majority only of the mission was in favour of offering to the British plenipotentiaries, an article confirming the British right to the navigation of the Mississippi, and ours to the liberty as to the fisheries, it becomes me, in* candour, *to acknowledge that I was in the minority on that question. I must reserve the power of communicating to you, hereafter, the reasons which influenced me to differ from a majority of my colleagues on that occasion, and* if they be insufficient to support my opinion, *I persuade myself* they will, *at least,* vindicate *my motives.*"

and was again so unfortunate as not to find Mr. Adams there. I saw, however, the gentleman with whom I had left the paper, and learnt from him, that as it had been dated, as he supposed, by mistake in 1822, he had taken the liberty to correct it, by inserting 1816. I made no objection, but repeated my expectation, that if it should not be deemed proper to use it for the purpose for which it had been delivered, it would be returned to me.

I made a third visit to the Department of State, on the 2d of May, if I remember correctly. Mr. Adams was then in his office, and in passing thither, I learned from the gentleman who had received the paper delivered by me on the 22d, that it had undergone another alteration in its date, and that 1816 had been made to give place to 1815. This last alteration was, it seems, found necessary to make the paper agree *in date* with the letter received from Paris, which had at last been found ; and thus to be able to use that paper, with a better grace, as a duplicate, and to abuse it with the more confidence for its variation from that letter. The *corrective power*, assumed, appears to have been limited acccordingly.

Mr. Adams soon spoke of the paper which I had left, on the 22d, and had not proceeded far without complaining of its difference from the original which had been found. This circumstance he affected to consider particularly offensive. In vain I represented that the difference between the two was not material ; that neither was personal or accusatory ; that both were merely defensive ; and that I was willing that either or neither should be communicated, as he might judge proper. I soon perceived that it was too late to offer explanation with a prospect of success. He was not in a humour to listen to me, even with civility ; the manner in which he treated the business, destroyed, in me, even a wish to conciliate or appease him.

I have stated these facts principally to show, that the paper was left at the Department of State, not on my own proper motion, but that it was left there on the application, and marked duplicate at the suggestion of a person belonging to that Department, and possessing the confidence of Mr. Adams. Such an application was altogether unexpected by me, and was made without any previous intimation, suggestion, or encouragement on my part ; and had it not been made, that paper would never have been left at the Department of State, nor in any other manner presented to the public. Having twice failed in my attempts to see Mr. Adams, I had no opportunity of offering those explanations which the case appeared to require, until it was too late to offer them.

I considered it an act of frankness to place the paper, when thus applied for, whatever might be its merits or defects, in the power of the person who might consider himself the most liable to be affected by its publication. In this act there was certainly neither secrecy nor concealment to offend him. He had the sole power to publish it or not, as he might judge proper, and to consult his own feelings and interests, in forming his decision. When a *private let-*

ter, written solely for the vindication of my own conduct, to those to whom I was immediately responsible, was asked of me, by a person known to be under the orders of the Secretary of State, for the purpose of presenting it to the public, a tribunal for which it had never been intended, and to which it ought not to have been presented without my consent. I certainly did believe, that I was permitted to make those corrections of the copy in possession, which appeared to me to be proper to exhibit my case most advantageously before that tribunal. I the more confidently entertained this opinion, as the paper was not to be there exhibited without the previous examination and consent of the adverse party. Such were the views with which it was unreservedly confided to Mr. Adams. But he communicated my private letter, as the paper called for, and, with it, he disingenuously communicated the paper, entrusted to him, not as the paper called for, but as a convenient vehicle for passionate invective and intemperate personal abuse against me. If justice, or even decency towards me, presented no obstacle, still, I should have believed, that a respect for the Representatives of the people of the United States, would have at least been sufficient to have deterred him from so rude and irregular a course of proceeding.

His first remark on what he ostentatiously presents as *a duplicate* is, that the letter written at Paris, "although of the same *general purport and tenor*, with the so-called duplicate, differs from it in several highly significant passages." He presents, as an example, a parallel extracted from the two papers. He deduces from this parallel, the contradiction that *I did believe*, in the one paper, and that *I did not believe*, in the other paper, that we were permitted, by our instructions, at Ghent, to offer a stipulation for the navigation, by the British, of the Mississippi. So far however, from the parallel passages exhibiting such a contradiction, they contain within themselves the evidence of their consistency with each other.

The original letter refers exclusively to the instructions of the 25th of June, 1814, (*a*) on which the majority, in the despatch of the 25th of December, of the same year, solely relied, when they said, "our instructions had forbidden us to suffer our right to the fisheries to be brought into discussion, and had not authorized us to make any distinction in the several provisions of the 3d article of the treaty of 1783."

(*a*) *Extract of a letter of instructions, received from the Secretary by the Commissioners at Ghent, dated 25th of June*, 1814.

"*Information has been received, from a quarter deserving attention, that the late events in France have produced such an effect on the British government, as to make it probable that a demand will be made at Gothenburg to surrender our right to the fisheries, to abandon* all *trade beyond the Cape of Good Hope, and to cede Louisiana to Spain. We cannot believe that such a demand will be made; should it be, you will, of course*, treat it as it deserves. These rights must not be brought into discussion. If insisted on, your negotiations will cease."

The duplicate also refers to the same instructions, and perfectly agrees, so far as it does refer to them, with the interpretation of them in the original letter.

The original letter says,

"The majority believed themselves to be permitted to offer a very explicit proposition, with regard to the navigation of its principal river. *I believed with them that we were so permitted*, and that we were likewise permitted to offer a proposition relative to the fishing liberty," &c.

The duplicate says,

"The majority believed themselves to be permitted, their own construction to the contrary notwithstanding, to offer a very explicit proposition with regard to the navigation of its principal river; now this offer I considered, for the reasons just suggested, *not to be a violation of the instructions*, in question," &c.

Instead of any contradiction or inconsistency, there is here a perfect accordance in the sense of the two papers, in relation to the instruction of the 25th of June.

I will here observe that my letter, written at Paris, in 1815, was as may be readily ascertained, confined to a discussion of the grounds which the majority assigned or suggested, in the despatch of the 25th of December, for the offer of the navigation of the Mississippi for the fishing privilege. To justify my own conduct to my government, in opposing that offer, I believed that it would be sufficient, at the time, to show why the reasons of the majority had not satisfied me. In preparing the paper which I left at the Department of State, I believed it to be proper, for the causes already suggested, to assign, for my justification, an additional reason which had influenced me in the course which I pursued, at the time. The paper therefore, says, in speaking of the offer, "but I considered it to be against the letter and the spirit of our instruction of the 15th of April, 1813." (*b.*)

Mr. Adams, in his remarks, admits, at least by implication, that "the letter and the spirit" of this instruction was, indeed, against that offer, when he resorts for a release from the obligation of observing it, to other instructions, of the 19th of October, 1814, which, he says, were received on the 24th of the following Nov. authorizing the *status ante bellum*, as a basis of negotiation. He

(*b*) *Extract of a letter of instructions from the Secretary of State, to the American Commissioners, dated 15th April*, 1813.

"*The article in the Treaty of* 1794, *which allows British traders from Canada, and the North West Company, to carry on trade with the Indian tribes, within the limits of the United States, must not be renewed.* The pernicious effects of this privilege have been most sensibly felt in the present war, by the influence which it gave to the traders over the Indians, whose whole force has been wielded, by means thereof, against the inhabitants of our western States and territories. You will avoid *also any stipulation, that might restrain the United States from increasing their naval force, to any extent they may think proper, on the Lakes, held in common; or* excluding the British traders from the navigation of the lakes and rivers exclusively within our own jurisdiction."

evidently means to insinuate if not to assert that, *in consequence* of the basis, thus authorized, the American mission discussed the proposition, relating to the navigation of the Mississippi and the fishing privilege, on the 28th and 29th of November, and, as a result of that discussion, offered it on the first of December to the British ministers.

This statement is incorrect. The sense of the mission was not distinctly taken on the 28th and 29th of November, in relation to this proposition, nor did any majority, at that time, agree to offer it.

The following is the real history of the transaction :—

On the 24th of October, we addressed a note to the British ministers and repeated a request already made to them, that they would communicate all the other specific propositions, (the preliminary article proposed by the British government having already been accepted by us) offering a simultaneous exchange of projects by both parties. The British ministers, by their note of the 31st of that month, declined complying with this request, saying that they had already by their note of the 21st of that month, communicated to us all the points upon which they were instructed to insist. After the receipt of this note, we met together every day, I believe, in order, first, to decide if we should present, on our part, a complete project to the British ministers without insisting on a simultaneous one, on theirs, and then, after having decided to do so, to prepare and digest this project, until the 10th of November, when it was presented. During this period the proposition in question, after having been repeatedly and thoroughly discussed, was carried, *as a part of the project*, in the affirmative, by a bare majority, Mr. Clay and myself having uniformly opposed it.

After the majority had thus decided on making the proposition just mentioned an article of the contemplated project, the dissatisfaction of the minority at this decision, especially of Mr. Clay, who declared that he would sign no treaty of which such an article should make a part, induced the majority, particularly the gentleman who is now no more, to relax in their adherence to it, and to consent to present our project without such an article. Instead of such an article in the project, or, as Mr. Adams himself avows, *as a substitute for it*, the paragraph, justly ascribed by him to Mr. Clay, was inserted in the note of the 10th of November.

That this proposition had been decided on, before the 10th of November, is not only to be inferred from the avowal of Mr. Adams, just mentioned, that *a substitute for it* had been inserted in our note of that day, but is expressly proved by the following extracts of two letters which I addressed, at the time, to the American minister at Paris.

The first is dated at Ghent, the 4th of November, 1814, and says,

"If we adhere to the understanding which we now have, we shall make the *status ante bellum* a *sine qua non*. The question

which most perplexes us is the fisheries, and we have not yet decided on the mode of proceeding, in relation to it. They have told us that the liberty of taking, drying, and curing fish within the exclusive jurisdiction of Great Britain, will not be continued to us without an equivalent; we cannot relinquish this liberty, and we cannot offer territory as an equivalent. Shall we then offer the free navigation of the Mississippi, which they apparently suggested with this view. I think this will be carried in the affirmative, although I have very serious objections to the measure."

The other letter was dated the 20th of November, 1814, and says as follows:—

"Without *having been deceived relative to the disposition of the majority*, on the subject of the free navigation of the Mississippi, I am happy to inform you that this disposition *was not inflexible*, and we finally transmitted our project without the article that had *at first been carried*." This article was as follows:—

"The right and liberty of the people and inhabitants of the United States to take, dry, and cure fish in places within the exclusive jurisdiction of Great Britain as recognised (and secured) by the former *treaty of peace;* and the privilege of the navigation of the Mississippi, within the exclusive jurisdiction of the United States, (as secured to the subjects of Great Britain by the same treaty) are hereby recognised and confirmed."

"Besides the objection to such an article which had occurred to you, and which had not escaped us, *the blending of the two points together* and *making them mutually dependent on each other*, which was not done in the treaty of 1783, made this article the more objectionable."

From these facts it is manifest that the *solution* afforded by Mr. Adams for "the difference in my mind between the writing of the original and the duplicate" is not correct. A despatch, received on the 24th of November, could not well have had any influence on my reasons for opposing a measure, previous to the 10th of that month.

I have accused no one of acting *against* instructions, but surely I ought not to offend if I discovered a disposition to act, as far at least as might be expedient, in conformity to my own construction of them.

Mr. Adams, when I last saw him at the Department of State, showed me on record, an instruction to the American ministers at Ghent, dated the *fourth* of October, 1814, apparently with a view to freshen my memory in relation to our dispensation from the obligation of observing the instructions, which I had alleged as a cause for opposing the proposition, with respect to the Mississippi. I had not proceeded far, however, in its perusal, before Mr. Adams interrupted me by saying that he believed it had not been received *at the time*, adding, after a momentary pause, that he did not know if it *had ever been received*. The instructions of the 4th of October, which had never been received, had just as much influence on

the discussions of the mission previous to the 10th of November, as a letter of the 19th of October which was not received until more than fourteen days after those discussions had taken place.

It may not be improper to remark here that an instruction received on the 24th of November, authorizing the *status ante bellum*, although highly satisfactory as it regarded the past, could not well, considering what had already been done, have had much practical effect on the future negotiations. On the 10th of that month we had, in substance if not in name, already proposed that basis in opposition to that of the *uti possidetis*, urged by our adversaries. In our note to them of that date, we offered with a sufficient precision the *status ante bellum*, when we said that the undersigned "cannot agree to any other principle than that of a mutual restoration of territory, and have accordingly prepared an article founded on that basis. They are willing even to extend the *same principle* to the other objects in dispute between the two nations; and in proposing all the other articles included in this project, they wish to be distinctly understood that they are ready to sign a treaty placing the two countries, in respect *to all the subjects of difference* between them *in the same state they were in* at the commencement of the present war, reserving to each party all its rights, and leaving whatever may remain of controversy between them, for future and pacific negotiation."

Besides, the proposition to which I objected before the 10th of November, and which was substantially that *first* offered on the 1st of December, was not, in my opinion, authorized by the *status ante bellum*. I distinctly stated, in my letter, that the revival of the British right to navigate the Mississippi would be under existing circumstances, a *new* and *complete* grant to her, &c. And in another place, "in thus offering the navigation of the Mississippi and the access to it through our territories, as an equivalent for the fishing liberty, we not only placed both on ground *entirely different* from that on which they respectively stood in the *treaty of* 1783," &c.

The meetings of the American mission on the 28th and 29th of November, were not in consequence of the despatch received on the 24th of that month. They were convened for the purpose of discussing "the alterations and suggestions" of the British ministers on our project which they had returned to us on the 27th, with an explanatory note of the 26th. Whatever might have been said at these meetings in relation to the Mississippi, on account of the alteration, respecting it, made in the 8th article of our project, by the British plenipotentiaries, no new resolution was there taken by the American mission to offer the navigation of that river for the fishing privilege. This offer was made on the 1st of December, in virtue of the vote taken before the 10th of November, and which, although suspended, had not been reconsidered or cancelled. I am the more confident in this statement, as I distinctly remember that when that offer was actually made, it was unexpected by a ma-

jority of the mission. Mr. Bayard, in returning home from the house of the British ministers, where the conference of the 1st of December had been holden, very explicitly declared to Mr. Clay and to me, his dissatisfaction that this offer had been made *without his having been recently consulted in relation to it.* I dare, in regard to these facts, to appeal to the recollection of Mr. Clay in confirmation of my own.

The explanation which I have given, will, I trust, be sufficient to show that there could have been no impropriety in stating, at any time, the instructions of the 15th of April, 1813, as furnishing an objection, at least during the first days of Nov. to a proposition to revive or continue to Great Britain a right to the free navigation of the Mississippi—a river within our exclusive jurisdiction. As this was the only topic, in the paper left at the Department of State, which was not in the letter received from Paris, which could by the most sickly imagination, be strained into anattack upon others, I shall take but little notice of the remarks of Mr. Adams in relation to the remainder of that paper.

The opinion which I there suggested, concerning the cause of the rejection of our proposition by the British ministers, was an opinion formed soon after that event, and I mentioned it to several persons, particularly to the American minister at Paris, at or about the time my letter was written at that place. A "trust in God and the valour of the West," for the disappointment of our enemies, was naturally suggested, at the time, by a pious and patriotic confidence in those who were able and might be willing to defend us, and certainly had nothing in it of prophecy. It was evidently more wise to place a trust there than *instinctively* in the fish of the East, which were swimming in British waters. Nor was there any semblance of prediction of the treaty of 1818, in a belief that the fishing privilege might thereafter be obtained, by negotiation, "without any *extravagant equivalent*, whatever," as that belief was not only suggested by the nature of the case, but authorized by the explicit offer made by the British ministers, on the 10th of December, 1814, thus to negotiate and to grant that privilege in consideration of a *fair equivalent.* By the measure of Mr. Adams, *no extravagant equivalent* is precisely equal to *no equivalent at all.*

As to the sentiment which I expressed in favour of the fishermen immediately interested in that privilege, it is a sentiment always and every where felt by me, and could not be expressed out of time or place.

Thus much for the important differences, between the private letter received from Paris and the paper left at the Department of State, which have afforded such an ample field to Mr. Adams for the display of the enviable attributes of his head and heart.

I shall now make a few brief observations on the principal charges which he exhibits against me, of inconsistency and misrepresentation.

The principle, that the treaty of 1783 was not, on account of its

peculiar character, abrogated by the war, Mr. Adams not only *re-asserts*, but alleges to have obtained, when first suggested by him at Ghent, the *unanimous* assent of the American mission. The proof of this allegation appears to be inferred from the signature, by *all* that mission, of a note, to the British ministers, of the 10th of November, in which that principle was partially adopted. It has already been seen, even from the avowal of Mr. Adams himself, that the paragraph, offered by Mr. Clay, admitting that doctrine, was a *substitute* to a proposition which the minority had opposed. To adopt, partially, *in the spirit of compromise*, a doctrine, as a pretext, to preserve the fishing privilege and to get rid of a proposition confirmative of the British right to the navigation of the Mississippi, cannot fairly be considered as an unanimous acknowledgment by the American mission, of the orthodoxy of that doctrine. The constitution of the United States was, avowedly, the result of compromise, and thence some, at least of those who signed that instrument, must necessarily have subscribed to provisions which they did not desire, and to opinions which they did not approve. The inference of Mr. Adams is, therefore, not correct. I do not recollect, indeed, that any member of the mission, excepting Mr. Adams himself, appeared to be a very zealous believer in that doctrine. Even Mr. Gallatin, in his separate letter of the 25th of December, 1814, (*c*) speaks only of this doctrine as one that had been *assumed*. Sure it is that the minority consented to admit that doctrine as an expedient only to prevent the proposition, already decided on by the majority, from constituting an article of our project. So far and no farther were the minority willing to go in adopting that doctrine, but whenever it was proposed to sanction the British right to navigate the Mississippi, they uniformly resisted it.

Mr. Adams also asserts that the proposal confirming the British right to the navigation of the Mississippi and ours to the fishing privilege, was made not by a *majority*, but by the whole of the American mission, and refers to the protocol of the conference of the 1st of December, at which that proposal was, at length, made, and to our note of the 14th of that month, signed by all the American mission, which said that "to such an article, *which they viewed as merely declaratory*, the undersigned had no objection, and have offered to accede."

(*c*) *Extract of a letter from Albert Gallatin, Esq. to the Secretary of State, dated 25th December*, 1814.

"*On the subject of the fisheries, within the jurisdiction of Great Britain, we have certainly done all that could be done. If according to the construction of the treaty of* 1783, *which we assumed, the right was not abrogated by the war, it remains entire, since we most explicitly refused to renounce it, either directly or indirectly. In that case it is only an unsettled subject of difference between the two countries.* If the right must be considered as abrogated by the war, *we cannot regain it* without an equivalent. *We had none to give* but the recognition of their right to navigate the Mississippi, *and we offered it. On this last supposition this right is also lost to them;* and, in a general point of view, we certainly have lost nothing."

If he had referred, at the same time, to the despatch of the 25th December, 1814, (*d*) he would there have seen that, in fact, a *ma-*

(*d*) *Extract from a despatch from the American Plenipotentiaries to the Secretary of State, dated at Ghent, 25th of December, 1814.*

At the first conference, *on the 8th of August, the British plenipotentiaries had notified us, that the British government did not intend, henceforth, to allow to the people of the United States,* without an equivalent, *the liberties to fish, and to dry and cure fish within the exclusive British jurisdiction, stipulated in their favour by the latter part of the third article of the treaty of peace of* 1783. *And in the note of the 19th of August, the British plenipotentiaries had demanded a* new stipulation *to secure to British subjects the right of navigating the Mississippi, a demand, which,* unless warranted by another article *of the same treaty of* 1783, *we could not perceive that Great Britain had any colourable pretext for making.* Our instructions had forbidden us to suffer our right to the fisheries to be brought into discussion, *and had not* authorized *us to make any distinction in the several provisions of the third article of the treaty of* 1783, *or between that article and any other of the same treaty. We had* no equivalent *to offer for* a new recognition *of our right to any part of the fisheries, and we* had no power to grant any equivalent, *which might be asked for it by the British government. We contended that the whole treaty of* 1783 *must be considered as one* entire and permanent compact, *not liable, like ordinary treaties, to be abrogated by a subsequent war between the parties to it, as an instrument recognising the rights and liberties enjoyed by the people of the United States as an independent nation, and containing the terms and conditions on which the two parts of one empire had mutually agreed,* thenceforth, *to constitute two distinct and separate nations.* In consenting, by that treaty, that a part of the North American continent *should remain subject to the British jurisdiction,* the people of the United States had reserved to themselves *the liberty, which they had ever before enjoyed, of fishing on that part of the coast, and of drying and curing fish upon the shores—and* this reservation *had been agreed to by the other contracting party. We saw not why this liberty,* then no new grant, *but a* mere recognition of a prior right, *should be forfeited by war, any more than any other of the rights of our national independence—or why we should need a new stipulation for its enjoyment more than we needed a new article to declare* that the king of Great Britain treated with us as free, sovereign, and independent States. *We stated this principle,* in general terms, *to the British plenipotentiaries, in the note which we sent to them, with our project of the treaty—and we alleged it as the ground upon which no new stipulation* was deemed by our government *necessary to secure to the people of the United States all the rights and liberties, stipulated in their favour by the treaty of* 1783. *No reply to that part of our note was given by the British plenipotentiaries; but, in returning our project of a treaty, they added a clause to one of the articles stipulating for a right for British subjects to navigate the Mississippi,* without adverting* to the ground of prior, and immemorial usage, if the principle were just, *that the treaty of* 1783, from its peculiar character, *remained in force in all its parts, notwithstanding the war, no new stipulation was necessary to secure to the subjects of Great Britain the right of navigating the Mississippi as far as that right was secured by the treaty of* 1783; *as on the other hand, no new stipulation was necessary to secure to the people of the United States the liberty to fish and to dry and cure fish, within the exclusive jurisdiction of Great Britain. If they asked the navigation of the Mississippi,* as a new claim, *they could not expect we should grant it without* an equivalent; *if they asked it because it had been granted in* 1783, *they must recognise the claim of the people of the United States to the liberty to fish and to dry and cure fish in question.*

To place both points beyond all future controversy, A MAJORITY OF US determined to offer to admit an article confirming both rights.

* This passage is here incorrectly quoted by erroneous punctuation; exhibiting a sense different from that of the original—for which see p. 55; but it is here, as published in the Boston Statesman of 27 June. A.

jority only, and not the whole of the mission, decided to make that proposal. The words of the despatch, in reference to that proposal, are, "to place both points beyond all future controversy, a *majority of us* determined to offer an article confirming both rights." Mr. Adams signed that despatch, and thus, at that time, attested a fact which he now positively denies.

The protocol was a mere record of the facts which had occurred at the conference, and in no way furnished proof that a proposition there made had or had not been previously decided on *unanimously* by the mission making it. The protocol of the 1st of December stated that the proposal in question had been offered by the American mission, and the note of the 14th of that month simply recognised that fact. Neither that protocol or that note intimated that this proposal had been *unanimously* offered by the American mission. The majority who were competent before the 10th of November, to determine on making that proposal, were equally competent to make it on the 1st of December, and to say, on the 14th of that month, that they had made it, and that "to it they had no objection, and had offered to accede." The minority, in not expressing their dissent at that conference, or by not refusing to sign that note, cannot be fairly adjudged to have inconsistently given their assent. They had opposed that proposal when and where only their opposition could have had a beneficial effect, and produced no evil. To have disturbed a conference with the British ministers by protesting against an act of the majority, or to have refused to sign a note from an objection to that act, could have produced evil only. It would have discovered to the adverse party dissention in our councils, and thence might have had a disastrous effect on the whole negotiation. In relation to the proposal itself, such a discovery to that party of our opposition to a particular proposal, was calculated to enhance the value of that proposal, in their estimation, and to induce them to accept it; thus consummating the very evil which we deprecated. The act of the majority was, in respect to the other party, the act of the whole; and Mr. Adams himself acknowledges that "it would have been equally valid without my concurrence or signature as with it." In his opinion, therefore, it would have been useless, and in mine, for the reasons just stated, it would have been highly mischievous, to have notoriously refused my acquiescence in the will of the majority. For what is called *assent*, *concurrence*, and joining in the offer, was merely an acquiescence in that will. For such an acquiescence I have long since accounted to my conscience, and now cheerfully account to my country. By the principles of our institutions the minority, though free to disapprove the acts of the majority, are bound to submit to them. If Mr. Adams does not agree with me in this view of the rights and duties of a minority, he will only present another instance in which we differ from each other in opinion.

I did not give a *silent vote*, which Mr. Adams says "it may be I did," after having said that I concurred with Mr. Clay in opposing it. "I did entertain, and express at Ghent, the opinions disclosed in my letter;" and, if I did not disclose them "*to the same extent*," I did state them with sufficient precision and perspicuity to entitle them to all the consideration which they might deserve.

Mr. Adams charges me with ascribing to my colleagues opinions which they never entertained, arguments which they never advanced, and doctrines which they not only would disclaim with indignation, but diametrically opposed to those which they did maintain. Let it be remembered here that my letter received from Paris was confined, in justification of my conduct, to combating the opinions, arguments, and doctrines of the majority, which, in the despatch of the 25th of December, 1814 (*d*) were stated by them, or at least by Mr. Adams, for that despatch was drawn up by him. Mr. Gallatin, indeed, in his separate letter of the same date, (*c*) does not go to the same extent. He merely states the *assumption* of the peculiarity of the treaty of 1783.

To support this charge, Mr. Adams says I impute to my colleagues an opinion that the Independence of the United States was derived from the treaty of 1783.

In what part of my letter he finds such an imputation I am at a loss to discover. In contending against any peculiarity of that treaty, I simply said "I could not believe that the Independence of the United States was derived from the treaty of 1783." Without admitting such a derivation of our Independence, I could not perceive, indeed, any ground for the peculiarity ascribed to that treaty; for a mere recognition of a *prior right* furnished none; no other treaty containing such recognition having been considered as possessing it. In denying such a derivation, although fairly inferrable from the doctrine of Mr. Adams, I charged no one with believing in it, but I removed the only foundation, as I conceived, on which the doctrine of Mr. Adams could be supported; and now, in disclaiming that foundation, unless he can show a better, he virtually renounces that doctrine.

He says, also, that I impute to my colleagues "that they rested their claim to the fishing privilege on prescription;" but he adds that, "as the settlement of the colonies themselves had not been of *time immemorial*, it *was not, and never was* pretended to be a title by prescription." This appears to have been a recent discovery. In the letter of the 25th of December, above mentioned, it is said, "this liberty, then," (1783) "no *new grant*, but a mere recognition of a *prior right always* enjoyed." And again, in the same letter, "without adverting to the ground of prior and immemorial usage," &c. If I erroneously inferred from these passages that a title was claimed from prescription, my error, I trust, will be considered a venial one. Mr. Adams can undoubtedly explain what he meant by "a prior right, *always* enjoyed," and by "the ground of prior *and immemorial* usage." He did not mean, it

seems, any thing like prescription. Is he quite sure that, in discussing this privilege, while in England, in 1815 or 1816, he never set up a prescriptive title, or a title from immemorial usage?

Mr. Adams likewise asserts that I represent "the offer of an article, granting to the British the right of navigating the Mississippi, as an *equivalent* for the fishing privilege in British jurisdiction." I certainly believed that it might have been so interpreted, even in its *original* form; and that, if so interpreted, it could be made to mean more than would be meant by a simple continuance of that right, and of that privilege, as they stood, *independently* of each other, in the treaty of 1783. That the navigation of the Mississippi was, at last, offered, not under the principle of Mr. Adams, or the *status ante bellum*, which thus far were the same, but as an *equivalent*, sufficiently appears from the documents, notwithstanding the *subsequent* intimation that "we considered that offer as *merely declaratory*." Besides, Mr. Gallatin, in his separate letter of the 25th of December, says, "if the right must be considered as abrogated by the war, we cannot regain it without *an equivalent*. We had none to offer but the recognition of the right to navigate the Mississippi, *and we offered it*."

I have now, I trust, satisfactorily explained the inconsistencies and *tissue of misrepresentations* with which Mr. Adams has, with so much dignity and propriety, charged me. To whom inconsistency and misrepresentation can be justly imputed an impartial public is left to decide.

With regard to what is considered so serious an offence, my not having shown my letter, written at Paris, to my colleagues, at the time, I will merely observe that the majority had already, in the despatch of the 25th of December, (*d*) given their reasons for the affirmative, without taking any notice of the reasons on which the minority supported the negative. I believed it just, therefore, to account for my conduct, by stating my objections to the reasons assigned by the majority, and to these objections my letter was confined. I imputed to the majority nothing which they had not alleged for themselves. Their case was before the government on their own showing, and I did not believe that there was any obligation to consult them on the case of the minority. To the only member of the mission who had a direct interest in that case, I did show, *at the time*, the letter written at Paris. I certainly was not aware of the proprienty or etiquette of communicating a private or separate letter to my colleagues, particularly as their private or separate letters had not been communicated to me. That they did occasionally write such letters is not only probable, but the letter of Mr. Gallatin, of the 25th of December, furnishes proof in point. That letter of Mr. Gallatin was never shown to me, and I certainly never felt myself aggrieved because it was not, although he stated in it the grounds in which he had acted as one of the majority.

I here most solemnly protest, as Mr. Adams appears to believe

a protest to be necesary to prove sincerity, that nothing which I have written was directly or remotely intended to impute either weakness, absurdity, or treachery, to the majority, and to infer such an imputation from my letter would seem to require a mind distorted by passion and a "jealousy that discolours every thing."

There was a difference, and I believe, an honest difference of opinion between me and some of my colleagues, on certain points, and if I felt it to be my duty to act according to my own, I certainly had the right to state the grounds of my opinion to those to whom I was immediately accountable for my conduct. In doing this, I accused no one—and if in endeavouring to prove that my opinion was correct, I implied that the opinion of those who differed from me was incorrect, I did no more towards them, than what, from the very nature of the case, was indispensable, or than what they, in defending their opinion, must necessarily have done towards me. Mr. Adams, indeed, goes much further. He appears to believe that self-vindication cannot be separated from *reproach*. In a conscientious difference of opinion between fallible men, who reason but to err, there can be no just cause for reproach ; but a pretended difference of opinion between infallible men must necessarily imply wilful error somewhere. I do not pretend to infallibility, and sincerely pity those who do. It may be less difficult to some minds to abuse the man, than to refute the argument. "Censure, reproach, and misrepresentation is, indeed, a shorter and easier process."

I still differ with Mr. Adams on his doctrine that the treaty of 1783, by reason of its peculiarity, could not be abrogated by war.

I still differ with him concerning the relative value of the navigation of the Mississippi and the fishing privilege.

I still differ with him, in respect to the consistency of his principle with the proposal which was first decided on, and after a period of three weeks, actually offered by a majority.

I shall probably continue to differ with him on these points, unless he can produce other and better reasons for my conversion than those contained in his remarks.

For his doctrine, he appeals to a class of treaties which are not known to exist, and to the ordeal of minds with which he has not made us acquainted. He relies on *instinct* when he says "I stop here for a moment to observe how *instinctively* both parties recur to the treaty of 1783, with a consciousness *that it was yet in full force*," when at the very first conference the British ministers gave us notice that the fishing privilege, granted by that treaty, would not be renewed, without an equivalent, thus considering that treaty to be at an end.

Express renunciation or conquest, that is, consent on our part or force on the part of Great Britain, might, according to Mr. Adams himself, abrogate our rights under the treaty of 1783; and these are precisely the means only by which we can be deprived of our rights under any treaty. The peculiarity, therefore, for

which Mr. Adams contends, is left on a very equivocal foundation. Mr. Adams insinuates that the convention of 1818 confirms his doctrine, and gives a final stroke to mine. That convention does not contain the slightest allusion to the doctrine of Mr. Adams, nor even to the treaty of 1783, but settles the differences which had arisen on the subject by a grant *entirely new*.

By the way, if an *express* renunciation was necessary, on our part, to surrender the fishing privilege, the *implicit* renunciation which Mr. Adams says was made by the British, cannot be sufficient to surrender their right to navigate the Mississippi—according to Mr. Adams, therefore, that right is unimpaired.

I certainly was not willing to renounce or to surrender the fishing privilege to force or conquest, but I was willing to adopt a doctrine which I believed, and still believe, to be the true one ; and which, if it deprived us of the benefit of the fishing privilege, released us at the same time from the evils of the British right to navigate the Mississippi, because I believed those evils outweighed that benefit. I have seen no cause since to change this opinion.

All that Mr. Adams says, in his remarks concerning the fishing privilege, is " that we had renounced certain parts, which *without being of much use to ourselves*, had been found very inconvenient to the British ; and that my views with regard to the magnitude of the fishing interest, he believes to be as incorrect as my principles on which I would have surrendered it. If I erred in my estimate of the fishing privilege, there is nothing in these remarks of Mr. Adams to demonstrate my error. I acted on the best information which I had at the time. And, if I erred, my error could not deserve reproach. I believe, however, that the views, disclosed in my letter, did not underrate or depreciate that privilege. The most authentic information which I have until now been able to obtain on the subject, justifies the opinion which I then entertained in relation to it. I am informed by respectable citizens well acquainted with the business, that few or no fish are now dried or cured within the British jurisdiction, and that most, if not all that are taken there, are taken by the few fishermen who have not sufficient capital to procure vessels of adequate size and strength to fish on the grand banks or in the open sea ; and that even those few fishermen are annually decreasing in number.

With regard to the British right to navigate the Mississippi, Mr. Adams says that it was a mere phantom—that they had *enjoyed* it for 30 years without *using* it—that in all human probability it never would have been of more *beneficial* use to the British nation than would be to the people of the United States the right of navigating the Bridgewater Canal or the Danube ; and that, in surrendering it, the British would have surrendered *absolutely nothing*. Although all this was not *said* at *Ghent to the same extent*, yet Mr. Adams certainly did express there his great contempt of the British right to reach and navigate that river. I have good reason to believe, however, that there was not another member of the mission who en-

tertained the same opinion. Each member estimated differently the importance of that right according to his own information and impressions. Some believed it to be of more importance—some of less importance, and some of about the same importance, as the fishing privilege, but not one, excepting Mr. Adams, considered it a mere phantom, worth absolutely nothing. Mr. Gallatin appears to have thought it equal, at least, to the fishing privilege. In his separate letter, already mentioned, (*c*) he says "if the right" (the fishing privilege) "must be considered as abrogated by the war, we cannot regain it without an equivalent. We had none to offer but the recognition of their right to navigate the Mississippi, and we offered it. On this last supposition," (the abrogation of the treaty of 1783, by war) "this right is also lost to them, *and in a general point of view we have certainly lost nothing.*" The necessary construction of this clause is, that, by abrogating the Mississippi right, we gained as much as we lost by abrogating the fishing privilege—and thus, *in a general point of view* we have lost nothing by abrogating both; thus making the two of equal value.

I certainly differed very much from Mr. Adams in his estimate of this right under his doctrine, united with his construction, or under his proposal. I did not appreciate it by the mere *beneficial* or legitimate uses that might be made of it. Its importance I considered to be derived from its evils—from the abuse of it, and from the pernicious facility which it would afford to British smugglers and British emissaries—to defraud the revenue and to excite the Indians. If our instructions, of the 15th of April, 1813, had been no longer imperative, they furnished, at least, evidence in point, which was entitled to attention. The privilege of British traders from Canada, and the Northwest Company, were not to be renewed, because "*the pernicious effects of this privilege had been most sensibly felt* in the present war, *by the influence which it gave over our Indians, whose whole force has been wielded by means thereof against the inhabitants of our western States and Territories.*

We ourselves had borne testimony, during the negotiation, to the magnitude of the evil resulting from allowing to British traders and agents access to our Indians. In our note to the British ministers of the 21st of September, 1814, we say, "The undersigned very sincerely regret to be obliged to say that an *irresistible mass* of evidence, consisting principally of the correspondence of British officers and agents, part only of which has already been published in America, establishes, beyond all rational doubt, the fact that a *constant* system of *excitement* to these hostilities was pursued by *British Traders and Agents, who had access to our Indians*, not only without being discountenanced, but with frequent *encouragement* by the British authorities. And if they had ever dissuaded the Indians from commencing hostilities, it was only by advising them, as in prudence, to suspend their attacks until Great Britain could recognise them in the war."

Here was surely evidence to prove the danger of giving to Bri-

lish Traders and Agents access to our Indians. If this access, owing to existing circumstances, had not hitherto, to any great extent, been practically derived from the right to approach and to navigate the Mississippi, yet this right, having become the only means of access, would undoubtedly have been made the thoroughfare of this nefarious intercouse. If I erred in this opinion, still I should hope to find charity for my motives. As a citizen of Massachusetts, I believed that justice and sound policy required that we should treat fairly and liberally every other section of the Union, and to do as we would be done by. As a minister of the United States, it was my duty to act impartially towards the great whole.

The inconsistency of Mr. Adams' doctrine with his conduct, in relation to the fishing liberty, needs no illustration. If that liberty was, as he alleged, inseparable from the general right, why separate them, by offering a specific proposition for the one, and leaving the other to rest on the treaty of 1783? If this liberty was, by our instructions, included in the right, why discuss it, as those instructions forbid us to bring that right into discussion? If this liberty was an attribute of our Independence, why rely for its continuance on the *peculiarity* of a treaty, and at the same time offer to make it an article of another treaty, where there could be no such peculiarity to perpetuate it? If that liberty was indeed an attribute of our Independence, I say that it depended on no treaty, but on those eternal principles on which it had been declared previous to any treaty—and on that high spirit and resistless energy which dictated and accomplished that declaration. Whenever that Independence, or any of the essential attributes of the sovereignty, which necessarily results from it, shall be denied or questioned, I trust in God and the valour, not of the West only, but of all, that we shall not resort to the dreams of a visionary, or to the dead letter of a treaty, to assert our rights and rank among the nations of the world.

I shall now close this defence against an unprovoked and unprincipled attack, trusting it, for my vindication, with the justice and liberality of my fellow citizens. If I had been previously entrusted with the remarks of Mr. Adams, as he frankly was with the paper which has mainly been the subject of them, I should have had an opportunity of simultaneously offering these explanations, and been spared the unpleasant necessity of thus appealing to the public. If I have not retorted the virulence and acrimony of Mr. Adams, it is because I have not felt them sufficiently to forget the respect which I owe to myself and to the public. I regret, equally with Mr. Adams, the necessity which he has supposed to exist for the virulent character of his remarks, but I shall have abundant reason to rejoice, if, in directing the infirmities of his temper against me, they shall have been diverted from a course in which they might have been disastrous to the country.

JONATHAN RUSSELL.

From the National Intelligencer of July 17, 1822.

MR. ADAMS' REJOINDER TO MR. RUSSELL.

Mr. Jonathan Russell having thought proper to transfer the scene of his attack upon the character and conduct of his colleagues, the majority of the late mission to Ghent, and especially upon mine, from the House of Representatives of the United States, where he first volunteered to bring it forward, to the newspapers, it becomes necessary for my defence, and that of my colleagues, against this assault, to apply to his new statements and representations a few of those "*correctives*" which, at the call of the House of Representatives, I did apply to the original and duplicate of his letter of 11th February, 1815.

The paper published by Mr. Russell in the Boston Statesman, of the 27th of June last, bears the same relation to truth that his original letters bear to their duplicates, and his sentiments to his signatures.

Nearly two columns of the paper published in the Boston Statesman, are occupied with a narrative of circumstances which preceded, attended, and followed, the delivery, by Mr. Russell, at the Department of State, on the 22d of April last, of the paper purporting to be a duplicate of his letter of 11th February, 1815, from Paris, to the then Secretary of State. In the course of this narrative, Mr. Russell makes the following admission; how reluctantly, the very structure of the sentence in which it is contained, will show; and it is proper that it should be exhibited in his own words:

"I certainly did believe that I was permitted to make those cor-
"rections of the copy in possession, which appeared to me to be
"proper to exhibit my case most advantageously before that tribu-
"nal"—[the tribunal of the public.]

The reasons of Mr. Russell for believing that he was permitted, in 1822, to make corrections which happened to suit his own purposes, in a paper furnished by himself to be communicated to the House of Representatives of the United States, as a specific letter written by him in Paris, in the year 1815, are as singular and surprising as the belief itself. They consist of insinuations and inferences that he had furnished the paper at *my* solicitation; that the word "*duplicate*," written upon it, with his own hand, gave no *further* intimation or assurance that it was so; that I had the sole power to publish it or not, as I might judge proper, and to consult my own feelings and interests in forming my decision; and that the paper was not to be exhibited to the public without the previous examination and consent of the ADVERSE PARTY. And with these ingenious principles, he has interwoven a statement of facts, with which he has believed himself permitted to take the same liberty that he had taken with his own letter; making in them those corrections which appeared to him necessary to exhibit his case most advantageously before the tribunal of the public.

Frail and tottering as is this scaffolding to support the cause of Mr. Russell's candour, I am concerned to say, that by a mere statement of the real facts, it must be taken entirely from under him.

The real facts are these:

On the 17th of January last, the House of Representatives of the United States adopted the following resolution:

"*Resolved*, That the President of the United States be requested to cause to "be laid before this House, all the correspondence which led to the Treaty of "Ghent, together with the Protocol, which has not been made public, and "which, in his opinion, it may not be improper to disclose."

In the ordinary course of business, this resolution was by the President referred to the Department of State, to report the papers to be communicated to the House, in compliance with the call.

In examining among the archives of the Department for those papers, I found among them a short letter from Mr. Russell to the Secretary of State, dated the 25th of December, 1814, the day after the signature of the treaty. It was not marked private, but it related principally to Mr. Russell's own affairs; and, referring to the joint letter of the mission, of the same 25th of December, 1814, in which it had been stated that a *majority* of it had determined to offer to the British an article confirming the navigation of the Mississippi to the British, and the fisheries to us, as stipulated in the treaty of 1783, it acknowledged, IN CANDOUR, that he, (Mr. Russell,) was in the minority on that occasion, and reserved to himself the power of communicating thereafter his reasons for being in the minority.

With Mr. Russell's *candour* in the transaction, at the time, I shall not now trouble the public. It was in the examination of the files for the purpose of answering the call of the House, that I first discovered the existence of this letter; and a question occurred to me whether it should be communicated with the other documents to the House or not. It was not *strictly* within the letter of the call, for it was not a part of the correspondence which *led* to the treaty —having been written the day *after* the treaty was signed. It had no bearing upon the information which had been assigned to the House as the motive for the call; and the only fact relating to the negotiation which it communicated, was, that upon *one* vote which had been taken in the joint mission during the negotiation, and that vote upon a question whether an offer should be made, which, when made, had been rejected, Mr. Russell had been in the minority, and reserved to himself the power of assigning his reasons, thereafter, for the purpose of vindicating his motives. It was doubtful whether it would be proper to disclose this difference of opinion, and Mr. Russell's solicitude to vindicate his motives for voting against a rejected offer, which had terminated in nothing. But, on the other hand, this *might* be, of all the documents relating to the negotiation, the most desirable one to the purposes for which the call had been made. The call might have been made with the special intention of eliciting this letter, or the disclosure of the fact which it attested. To have withheld the letter might have given

rise to surmises of special motives for veiling from the eye of Congress, and of the nation, the discovery of that fact. As Mr. Russell was upon the spot, and a member of the House, I determined to mention the letter to him, and place it at his option whether it should be communicated to the House or not. I did so, at my house, as he has stated; and it was on the 26th of January. But Mr. Russell did not say that he had no distinct recollection of the letter, to which I alluded, and that he wished to see it before he *gave his consent to its publication.* I had not asked his consent to its publication. I had told him there was such a letter; and left it at his option whether it should be communicated in the answer to the call of the House of Representatives, or not. His first reply was, that he thought it was a *private* letter, which it would be improper to communicate to the House; but, after a pause, as if recollecting himself, he said he wished to see the letter, before giving a definitive answer. To this I immediately assented. Mr. Russell accordingly repaired to the office, and saw his letter; not in my presence, or in the room occupied by me, but in that of Mr. Bailey, the clerk who has charge of the diplomatic documents. Mr. Russell then desired to examine the whole of the correspondence relating to the Ghent negotiation, and afterwards twice in succession requested to be furnished with copies of one paragraph of the instructions to the commissioners, of 15th April, 1813. That paragraph is the one which, in the duplicate, is cited so emphatically, and with so many cumulative epithets, in support of the charge against the majority of the mission, of having violated both the letter and the spirit of their explicit and implicit instructions. After all these examinations, and after a request to be furnished with a copy of this most pregnant paragraph, in all of which he was indulged to the extent of his wishes, he told me that he saw no objection to the communication to the House of his separate letter of 25th December, 1814; with the exception of a part of it, not relating to the negotiation. He was informed that the part only indicated by himself would be communicated; and accordingly that part only was communicated. Mr. Russell then added, that there was *another letter*, written at Paris, conformably to the indication in that of 25th December, 1814, and containing his reasons therein alluded to; *and which he wished might also be communicated with the rest of the documents, to the House.* This was the first intimation I had ever received of the existence of the letter of 11th February, 1815; and I told Mr. Russell that, if it could be found upon the files of the Department, it should be communicated with the rest. I directed, accordingly, that search should be made, and afterwards that it should be repeated, among all the files of the Department, for this letter. It was not to be found. After a delay of several days, for repeating these ineffectual searches, I deemed it necessary to report, in answer to the call of the House; and the documents were all sent, including that portion of his letter of 25th December, 1814, which he himself had marked for communication.

It was not alone to me that Mr. Russell had expressed the wish that his letter of 11th February, 1815, might be communicated with the other documents to the House. He had, as appears by the statement of Mr. Bailey, repeatedly manifested the same wish to him. He had even gone so far as to inform him, that he had a copy of it at Mendon, and to inquire of him whether a copy of it from himself would be received at the Department, for communication to the House. He did not, indeed, make the same inquiry of me, nor was I then informed that he had made it to Mr. Bailey. If I had been, I should have immediately answered that it would be received and communicated. I knew not what were the contents of the letter: but I knew that, whatever they might be, I could have no objection to their being communicated, at the desire of Mr. Russell himself; and far from suspecting him capable of believing himself permitted to make any alterations in the copy, to suit present purposes, I should have thought the bare suspicion an outrage upon his honour.

But I had no desire of my own that the letter should be communicated. I regretted even that Mr. Russell had chosen that the part of his letter of 25th December, 1814, which announced his disagreement with the majority of the mission, should be communicated. I regretted that he had ever thought proper to inform the Secretary of State what had been his vote upon that occasion; and I was perfectly assured, that there never had existed a moment when there could have been any necessity for him to vindicate his motives for that vote. I was assured that neither the government nor the nation would ever have inquired of him how he had voted, if he had not been so over-earnest in his solicitude to tell them. And I was equally convinced, that after he had told them, it would not ultimately redound to his credit. I had no feelings of enmity towards Mr. Russell. Our private intercourse had been, for more than ten years, that of friendship, which, in no instance whatever, had been, in word, deed, or thought, violated by me. As an associate in a trust of great importance, the general result of which had been satisfactory to the country, he had always had claims, sacred to me, to my peculiar regard. With the high and honourable duties of that great trust, I had mingled no little expedients of self-aggrandizement by the debasement of any of my colleagues. I had sown no seed of future accusation against a brother commissioner, in the shell of a pretended vindication of myself. I had laid up no root of rancorous excitement, to be planted, after the lapse of years, in the soil of sectional prejudice, or party prepossession. I lamented to discover that Mr. Russell had not so dealt with his colleagues of the majority; and I was mortified to see the earnestness with which he appeared determined to blazon forth this disagreement of opinion, and the part that he had taken in it, to the world. I felt that it neither became me to object to the communication of either of his letters to the House, if desired by him, nor officiously to offer him facilities for the communication, which

he had not suggested to me himself. I, therefore, did not ask him to furnish, himself, a copy of his letter from Paris, to be communicated to the House; but, on the 21st of February, reported to the President, for communication to the House, all the other documents, embraced by their call of the 17th January preceding.

The message from the President to the House, communicating the documents, was delivered on the 23d of February, and was ordered to be laid on the table.

On the 19th of April, the following resolution was adopted by the House, having been first moved the day before:

"*Resolved*, That the President of the United States be requested to cause to be communicated to this House, if not injurious to the public good, any letter, or communication, which may have been received from Jonathan Russell, Esq. one of the Ministers of the United States who concluded the Treaty of Ghent, after the signature of that Treaty, and which was written in conformity to the indications contained in said Minister's letter, dated at Ghent, 25th December, 1814."

It will be observed, that nearly two months had intervened between the report of the Ghent treaty documents to the House, and this second call, which Mr. Russell has admitted was made at his suggestion.

On Saturday, the 20th of April, the day after the adoption of the resolution of the House, and even before it had been officially referred to the Department for an answer, Mr. Daniel Brent, the chief clerk of the Department, without consulting me, but knowing the anxious desire that I should feel, of being enabled to report the paper called for by the House, knowing also that it was not upon the files of the Department, called upon Mr. Russell, at his lodgings, and inquired of him whether he could furnish the letter desired; and was told by Mr. Russell that he could, and would deliver it to the President. Mr. Brent, it seems, suggested that it would be better that it should be delivered as a *duplicate* than as a copy, to which Mr. Russell assented. This distinction, which has reference chiefly to the forms of office, would not have occurred to me. Between a *copy*, marked as such by the writer, signed by him, and all in his own hand-writing, and a *duplicate*, furnished as such also by the writer, I can perceive no difference of substance, though, as evidence in a court of justice, or as a document in the public archives, one might bear the character of an original paper, and the other only of a copy. Mr. Brent had too much respect for Mr. Russell, to imagine it possible, whether he gave the paper as a copy or as a duplicate, that he should give it other than as the letter originally written, and called for by the resolution of the House.

Mr. Russell, however, did assent to the suggestion of Mr. Brent, and, with his own hand, wrote the word "duplicate" on the paper, which he had already prepared to deliver, to be reported in answer to the call of the House. He did more: he erased with a scraper the word "copy," which he had previously written in its stead, and the traces of which are still discernible on the paper.

What, then, does Mr. Russell mean, when, in the Boston Statesman of 27th June last, he says, that when he delivered the paper at the Department, to Mr. Brent, on the 22d of April, "the word "[duplicate] had indeed been written on it, in consequence of his "suggestion, as above stated: *but I gave no further intimation, "much less any assurance that it was so.*" These are Mr. Russell's own words; and what can they mean? They have been, at least by some portion of the public, understood to mean, that the paper had been styled a duplicate, not by Mr. Russell, but by me. O no! the word was written with Mr. Russell's own hand; and when I received the paper I knew not that there ever had passed a word between Mr. Brent and him whether it should be delivered as a duplicate or a copy. The Boston Statesman, of the same day in which his reply is published, says "Mr. Russell, without much reflection, consented" (to give it as a duplicate.) I should think he had time enough for reflection, while at work with the scraper, to efface the word "copy," for which it was substituted. Mr. Russell's meaning is, therefore, that, although he wrote the word duplicate with his own hand, yet he did not intend it should be received as an *intimation*, much less as an assurance, "THAT IT WAS SO."

Mr. Russell had been explicitly told by Mr. Brent, that his call to inquire whether he could furnish the paper called for by the resolution of the House, had not been at my desire, or with my knowledge, but of his own motion. But it seems Mr. Russell did not believe him; and instead of delivering the letter, as he had said he would, to the President, he brought it to the Department, and delivered it to Mr. Brent himself; observing that he was indifferent whether it was communicated to the House or not; but, if it should not be, he wished it might be returned to him.

The singularity of this observation is not among the least extraordinary incidents of this transaction. Mr. Russell, who, while the first resolution of the 17th of January, calling for the Ghent treaty documents, was to be reported upon by the Department of State, had expressed to me, and repeatedly to Mr. Bailey, the *wish* that his letter from Paris should be communicated—Mr. Russell, at whose suggestion the specific call from the House of the 19th of April, for that letter, had been moved—Mr. Russell, who in the interval had written to Mendon for the original draft of his letter, had received it from Mendon, and on the morning after the resolution of the House calling for it, was already prepared with a "copy" of it to deliver to the President, a copy consisting of seven folio sheets of paper—transforms this copy, at the suggestion of Mr. Brent, into a duplicate, and after having again on Saturday declared to Mr. Brent his *wish* that it might be communicated to the House, brings it on Monday morning to the Department, and in delivering it to Mr. Brent, says he is indifferent whether it should be communicated to the House or not; but, if not, wishes it may be returned to him.

What was the meaning of this tardy hesitation and new-born indifference, whether it should be communicated or not? Why does he say that the application from the Department of State for his letter was made without any previous intimation, suggestion, or encouragement on his part; and that, had it not been made, that paper would never have been left at the Department of State, nor in any other manner presented to the public? Why did he bring it to the Department? He had told Mr. Brent that he would deliver it to the President; and of this disposal of it, Mr. Brent had approved. Why does he represent it as a demand upon him from the Department of State of a *private letter*, never intended for the public? Neither I nor any person at the Department of State, knew that the letter was *private*. Mr. Russell knew it, although he had prepared his *copy* or his *duplicate*, without marking it as such. He had told me, when I mentioned to him that his short letter of December 25, 1814, was among the documents of the negotiation at the Department, and asked him whether he chose it should be communicated to the House; he had then at first told me that he thought that was a private letter, which it would be improper to communicate; but when, after having examined it, he decided that part of it should be communicated, he had told me there was another letter written from Paris, which he wished might also be communicated. He had not spoken of it as a private letter, nor did he deliver the *duplicate* as such to the Department. He omitted from it the word *private*, which had been written by himself upon the original. This omission was doubtless one of those corrections, *which appeared to him proper to exhibit his case most advantageously before the tribunal of the public.* Its tendency certainly was to excite a suspicion in the public mind, that the original letter was or had been upon the files of the Department, and that in the answer to the prior call of the House of 17th January, *it had been suppressed.*

Mr. Russell's delivery of his *duplicate* at the Department of State was entirely spontaneous. It had not even been asked of him by Mr. Brent; and the inquiry which Mr. Brent had made of him, whether he could furnish a duplicate of the letter called for by the resolution of the House, if application should be made to him for it, had been without my knowledge; and Mr. Brent had told him so. Mr. Russell delivered his *duplicate* at the Department as a *public letter*, and as if the original itself had been also public. What then does Mr. Russell mean, when he says that he left it for my examination? What does he mean, by saying that I had the sole power to publish it or not, as I might judge proper, and to consult my own feelings and interests, in forming my decision? There was "a resolution of the House of Representatives," calling upon the President to cause to be communicated to them a letter specifically designated. The writer of that letter, after repeated expressions more than two months before to me and to Mr. Bailey, that he *wished* that letter might be communicated to the House, now brought to the

Department a *duplicate* of it, and says I was at liberty to publish it or not, as it might suit my feelings and interests. Mr. Russell is not so ignorant of the duties of a Secretary of State as not to know that, in the usual course of business, the resolution of the House was referred by the President to the Department of State for a report, and that when once his letter had been delivered by himself at the Department, it was my indispensable duty to *report* a copy of it to the President for communication to the House. Had it directly charged me with treason to my country, as it indirectly did little less, my only and inflexible duty as Secretary of State was, to report it to the President for communication to the House. By the terms of the resolution of the House, *the President* indeed might have withheld it from the House, if in his judgment the communication would be *injurious to the public interest:* but of that, the President, and not I, was the judge. Suppose even that the President, in forming his judgment, had thought proper to consult my opinion upon it, with what face could I advise that it should be withheld? If the letter was not a tissue of misrepresentations, the Secretary of State, and the Minister of the United States in France, were men unfit to hold any station whatever in the service of their country; and that was the impression evidently intended to be produced by the letter, at least throughout the largest and most growing section of the Union. Upon what pretence could *I* have advised the President to withhold the communication as injurious to the public interest? If there was truth in the letter, its contents could not be too soon known to Congress and to the nation. It was fitting that the conspirators against the peaceful and unoffending inhabitants of the Western Country, should be unmasked before the public, and that the world of the West should be apprized of the whole extent of their obligations to the great confider in their valour and in God.

On receiving the paper, therefore, my only duty was to report a copy of it to the President, for communication to the House, in answer to their call. On perusal of it, I found that it was marked *duplicate*, but not *private*, and that it bore date "Paris, 11 February, 1822."

My first impression certainly was, that the error of this date was in the *time*, and not in the *place*. I supposed it an inadvertency, such as not unfrequently happens in copying papers of date other than the current year, which in the hurry of writing is substituted unconsciously for the date of the original. I did not then perceive that the word *copy* had been written close at the side of the word *duplicate*, and scraped out. The erasure had been made with a cautious and delicate hand; its attenuation of the texture of the paper, was not perceptible to an unsuspecting eye; and in the freshness of the ink when performed, must have appeared to be complete. In the progress of blackening, incidental to ink after it has been some days written upon paper, the traces of the word soon became perceptible, and are now apparent upon its face. Both the

words, the date, and the whole letter, are in the hand-writing of Mr. Russell.

On reading the letter through, I found it had been composed with a view to be received and understood as if all written at Paris, in February, 1815. Yet I was confident it had not all been so written. I was particularly struck with the following passages. "I will frankly avow, however, that my impressions were, *and still* "*are*, that Great Britain, calculating on the success of the power- "ful expedition which she HAS SENT against New-Orleans, confi- "dently expected that she would have become the mistress of "Louisiana, and all its waters; and that she did not, in this event, "intend to abandon her conquest under the terms of the treaty of "Ghent."

"*If she be* disappointed in her views on Louisiana, and I trust "in God and the valour of the West that *she will be, I shall not be* "*surprised*, if, *hereafter*, she grants us the fishing privilege, which "costs her absolutely nothing, without any extravagant equivalent "whatever."

"At any rate, we *are still at liberty to negotiate* for that privilege, "and to offer for it an equivalent, fair in its comparative value, and "just in its relative effects."

"I trust in GOD she WILL BE"—in a letter dated Paris, 11 February, 1822—signed Jonathan Russell—addressed to the Hon. James Monroe, Secretary of State—and delivered by Mr. Russell to be communicated to the House of Representatives, in answer to a call suggested by himself for a letter written by him in 1815! And Mr. Russell charges me with *disingenuousness*, for communicating this paper to the House! And Mr. Russell talks of *respect for the Representatives of the people of the United States!* I am in the judgment of my country, upon this state of facts. But as for Mr. Russell, when he wrote that—"I trust in God, she will be"—and came to the name of GOD—did not the pen drop from his hand?

I took the letter to the President, and expressing to him my suspicion, that the above passage particularly had never been written at Paris, requested him to cause search to be made among his private papers for the original letter, if there ever had been one. The search was accordingly made, and the letter was found. On comparing them together, I immediately perceived that the original was marked *private;* which the duplicate was not. I turned immediately to the prophesies of the duplicate: in the original they were not. I looked to the passage in the duplicate, which represents the fishing privilege, not only as utterly insignificant, and trifling in value, but as having been proved to be so by the best information "*we* (the plenipotentiaries at Ghent) *could obtain* on the subject." There was a whole system of misrepresentation in these words *we could obtain:* for they represented the incorrect estimate of the *value* of the fishing privilege which they introduced, as the result of information obtained by the whole mission at Ghent, as having been there discussed, and as aggravating the wrong of the

majority, in offering so extravagant an equivalent, for what they knew, upon their own inquiries, to be of so little value. Knowing, as I did, that the information was all misinformation; that no information concerning the value of the privilege had been, or could have been, obtained by the joint mission; and that, excepting some doubts as to its value, expressed, not by Mr. Russell, it had never been even a subject of conversation in the mission—I turned to the real letter from Paris, to see how the writer had expressed himself there, and found he had written, "according to the best information that *I can* obtain on the subject." I saw immediately that all that tale about the obscurity and humidity of the atmosphere, in the high northern latidudes, to degrade the value of the Labrador fishery, was not in the original even pretended to have been information sought or obtained by the joint mission; that the *discovery* which it discloses was not pretended to have been ever made known to the mission; that the fogs, so pernicious to the curing of the fish, were in the original letter, if not merely the vapours of Mr. Russell's imagination, at least no more than the result of the best information that *he* could obtain. And I instantly saw, too, the motives for the substitution of the words *we could* in in the duplicate, for the words *I can*, in the original. As the original had been written the bill of indictment which it virtually contained against the majority of the mission, left them at liberty to say, in their defence, that if they had overrated the value of the fishing liberty, it had been at least an honest error. It left them at liberty to inquire, why Mr. Russell, in their discussions upon the fishery question, had not revealed to them this great discovery of obscurity and humidity and incessant fogs, which lessened so much the value of the fishing liberty. The *we could* of the duplicate took from them all such means of defence. It represented them as having wilfully sinned against their better knowledge; as having sought information of the value of the fishing liberty—as having obtained proof of its worthlessness—*and yet* as having persisted in offering for it an equivalent which was to let in British smugglers, British emmissaries, and all the horrors of Indian warfare, upon the *unoffending* inhabitants of the West. Was this one of those corrections which Mr. Russell believed himself permitted to make, which appeared to him proper, to exhibit his case most advantageously before the tribunal of the public?

Proceeding in the comparison between the two papers, when I came to that sublime panegyric upon the fishermen to atone for the absolute surrender and eager sacrifice of their liberties; to that cheering cup of consolation doled out to them as a peace-offering for the extinguishment, as far as Mr. Russell's labours could avail, of their means of subsistence, "that the essential security and prosperity of the *many*, must *be preferred* to the convenience and minor interests of the few;" to that swelling peal of self-applause, for early prepossessions silenced, and local predilections subdued; all substituted in the duplicate, for a mere postscripted trust, in the

original, that his *argument to demonstrate* the abrogation of the treaty of 1783, by the war, and the consequent *discontinuance of the fishing privilege*, would not be ascribed to any *hostility* to those interested in it—the mingled emotions at the bottom of the soul of the writer, betrayed by these self-accusing and self-extolling variations from his letter as it had been originally written, excited in my mind a sentiment too much cheered with merriment, and too much mitigated by compassion, for anger to have in it any part. But when, in place of a paragraph in the original letter, expressly declaring that he had believed with the majority that the propositions relating to the navigation of the Mississippi and to the fisheries "*violated in no way our instructions*," I found foisted into the duplicate a paragraph, accusing the majority not only of the violation of their instructions, but of a wilful and wanton violation of them, as understood by themselves; and to support this interpolated charge, a cancelled paragraph of instructions solemnly cited, of which he had, within two months, obtained from the archives of the Department two successive copies—let me candidly confess that the sentiment uppermost in my mind was *indignation*. Mr. Russell comments upon the infirmities of my temper, and says, that when afterwards I pointed out to him, face to face, these palterings of his own hand-writing, and gave him proof, from the records of the Department, that the instructions cited by him in support of his charge against his colleagues, had been *cancelled* at the time to which the charge applied, I was not in a humour to listen to him even with civility. This I deny. I did listen to him with civility. The reason that he assigned to me for the variance between his original and his duplicate was, that the whole of the original draft, for which he had sent to Mendon, had not been found, and that he had been obliged to make up the two last leaves from memory. He said, too, that there was no material variation of *facts*, as represented in the two papers. He said, as he says in the Boston Statesman, that he had felt himself at liberty to alter the paper to make his case better for the public eye. He said he had never written against me anonymously in the newspapers, and intimated that, in the year 1816, when I was in Europe, there had appeared in the Boston Centinel a paragraph, charging him with having been willing, at Ghent, to give up the fisheries—a thing of which I had never before heard. He assured me that, in bringing his letter before the public, his motive had *not* been to combine with my enemies to ruin my reputation. To all this I did listen with perfect civility and composure; and the last words with which I parted from him, however painful to him and myself, were not wanting in civility. They are clearly impressed upon my memory, and I trust they are upon his. He is at liberty to publish them if he thinks fit, as they were spoken. I should not have alluded to them here but for his charge of incivility, which is as groundless as all the other charges of which he has been the willing bearer against me.

But Mr. Russell did not say, that he had understood the application from Mr. Brent to him, to know whether he could furnish the duplicate of the letter called for by the House, had been made with my privity, or by my authority. He did not say that it had not been his intention to deliver it as a duplicate. He did not say that he had purposely dated it "Paris, 11th February, 1822," to give notice that it was not the letter written by him in 1815, called for by the resolution of the House. He did not say that it was at my option whether to communicate it to the House or not, nor did he insinuate that the alteration at the Department of the date from 1822, first to 1816, and then to 1815, had been made without his approbation or consent. To all this he knew the refutation was too near at hand to admit of its being said at that time and place. As to his giving explanations to me, what explanation could he give? What explanation has he given to the public? The call of the House was for a specifical paper written by him—he had furnished a paper as a duplicate of it, in his own hand-writing. It had been detected as a paper, so much the same, and yet so different, that it was susceptible of no explanation consistent with fair dealing: and the expedients to which Mr. Russell is reduced, in attempting to account for it now, afford the most unanswerable proof, that he has for it no honest explanation to give. He desperately seeks an apology for it, by imputing to me a design to entrap him, by the alteration of the date of his duplicate, from 1822 to 1816, and then to 1815, made at the Department. These alterations were made like the application of Mr. Brent to Mr. Russell, for the duplicate *without my knowledge*, and happened thus.

After comparing the two papers together, I gave the duplicate to Mr. Bailey, for a copy of it to be made, to be reported to the President, for communication to the House. Mr. Bailey gave it to be copied to Mr. Thomas Thruston, a Clerk in the Department, a young man of a fair and honourable mind. Perceiving the date of the letter to be "Paris, 11 February, 1822," and knowing that Mr. Russell had been through the whole of that month attending Congress in this city; not suspecting for a moment that this date had been designedly assumed by Mr. Russell, he consulted Mr. Brent, who, concluding with him that the date of *the year* was an inadvertency, authorized him to rectify it in the copy. Mr. Thruston thought that he might extend that kindness to Mr. Russell further, by making the same change in the paper itself. He passed his pen therefore through the figures 1822, and wrote over them 1816, thinking that was the year in which the letter was written. This change was not only made without my knowledge; but when made known to me was disapproved by me. Mr. Brent supposed that all would be set right by making known the alteration to Mr. Russell himself, and obtaining his consent to the rectification of the date of the year. He did so; and Mr. Russell not only approved of the change, but brought his original draft to the Department, and showed the date of it to Mr. Brent, to confirm the second correction. I only ask, how intense must be the pressure of that con-

sciousness, which attempts to palliate the variations in Mr. Russell's two papers, by representing incidents like these, as crafty wiles of mine to ensnare his innocence?

Mr. Russell complains that, after the *original* of his letter had been found, the *duplicate* should have been communicated to the House at all. He complains that I should have presumed to make remarks upon *both* of them. He complains that I went to the House of Representatives on the 6th of May, and there in person sought for a member who would consent to make the call which was necessary for the *official* publication of my *personal* remarks. As usual, part of these statements is true, and part is not—my call at the House of Representatives on the 6th of May, was accidental; being on my return from witnessing the experiment of Commodore Rodgers's noble invention at the Navy-Yard. I did not there seek for a member who would consent to make the call. I never asked *any* member to make the call; though I told several members who spoke to me on the subject there, and elsewhere, that it was my *wish* the documents should be communicated to the House. The President's message to the House of the 4th of May, which Mr. Russell had seen before he left the city, had informed the House of my desire that the letter should be communicated, together with a communication from me respecting it.

The truth is, that my desire for the communication of Mr. Russell's letter to the House had commenced on the same day that his own had ceased. Mr. Russell, from the 26th of January to the 22d of April, had been indefatigable in his exertions to bring this letter before Congress and the public. He had procured the original draught of it from Mendon; he had procured the call for it from the House; he had endured the toil of re-writing, with his own hand, at least once, a letter of seven folio sheets of paper; he had brought and delivered it with his own hand, at the Department. At the moment of fruition his appetite fails him. Doubts of consequences to *himself*, as well as to others, seem to flash across his mind. He leaves the paper—For what? For communication to the House, in answer to their call? No! "To put it in the power *of the person who might consider himself the most liable to be affected by its publication*"—for the "previous examination and consent of the ADVERSE PARTY." He seems to invite objection to its being communicated. He is quite indifferent whether it be communicated or not, and, it not communicated, he desires that it may be returned to him. But to make its terrors irresistible, he has double and treble charged it with crimination of violated instructions; and to vouch his charges, has twice armed himself with official copies from the Department, of the *cancelled* part of the instructions of 15th April, 1813.

I had never wished for the communication to the House or to the public of the letter, until I had seen it. The effect of its perusal upon my mind was certainly different from what Mr. Russell appears to have anticipated. I saw at once what it was and what it

meant. I also saw, in a great measure, what its writer was, which I had never seen before, and the discovery of the original letter, two days after, disclosed him to me in all his glory. In the private relations between us, I remembered what he had been to me, and what I had been to him, for more than twelve years before, until, and including that very morning. I saw that he was now to be, in substance and in intent, my accuser, and that of the colleagues with whom I had acted, before the House, of which he was a member, and before the nation. In the original he had been a secret accuser, under the mask of self-vindication. In the duplicate he had laid aside the mask, though not the professions of unfeigned respect; and to all the secret discolourings of the conduct and opinions of his colleagues, had added the new and direct charge of a wanton and wilful violation of their instructions, *as understood by themselves*. To have shrunk from these charges would, in my estimation, have been equivalent to an admission of their truth. To have suppressed them, after the prying curiosity, which had long been stimulated, to see this mysterious and fearful letter, would have been impossible. No honourable course was left me but that of meeting the ADVERSE PARTY on the scene which he himself had selected for his operations; and I knew that little more would be necessary for my own vindication, and that of my colleagues, in the minds of all impartial men, than from the materials furnished by Mr. Russell himself, to expose to the House at once the character of the accusation and of the accuser. I did, therefore, desire that both the letters of Mr. Russell, and my remarks upon them, should be communicated to the House; but even then, if Mr. Russell, instead of affecting indifference, had fairly acknowledged his error, and requested that the papers might not be communicated, I would have joined him in that request to the President.

Both the letters were communicated to the House; both were strictly within the call of their resolution, which was for "*any letter* which may have *been received* from Jonathan Russell, in conformity with the indications contained in his letter of the 25th December, 1814." I remarked upon both; and if that has proved a mortification to Mr Russell, he should recollect that he brought it upon himself. It was his fault there was any difference between them to remark upon. He should also remember, that if the original alone had been communicated, he would have been deprived of the benefit of "*those corrections of the copy in possession, which appeared to him proper to exhibit his case most advantageously before the tribunal of the public.*"

Mr. Russell is mistaken in supposing that I attach any importance to his protest, as adding authentication to his professions, or proving his sincerity. What difference can there be between the word of a man, with or without protest, who, after writing the word duplicate upon a letter written and signed by himself, to be communicated as a public document to a legislative body, tells the public that he gave no *further* intimation, much less an assurance, *that it*

was so, and avows that *it was not so?* If the name of God, under Mr. Russell's pen, could not deter him from converting the past into the future, that he might enjoy the honours of prophecy, and couple with his trust in the Deity, his confidence in the valour of the West, what excuse could I have for considering the declaration of Mr. Russell as either more or less sincere for being backed by his protest?

"To add a perfume to the violet
"Is wasteful and ridiculous excess."

But if Mr. Russell, after delivering on the 22d of April his duplicate at the Department of State, and especially after he knew that the orignal had been found, was no longer solicitous that either of them should be communicated to the House, he had neither given up the inclination, nor the intention of appearing before the public, as the accuser of his colleagues of the majority at Ghent.

He left the City of Washington on the 5th of May, the day after the House of Representatives had received the President's answer to the call of the 19th of April—with that answer the President communicated to the House my report to him, which had been accompanied by a copy of the *duplicate* left by Mr. Russell at the Department for communication. But the President did not communicate the copy of the duplicate itself. He informed the House that the *original* had also been found—that it had been marked as a *private* letter, by the writer himself—that it disclosed *differences of opinion* which would naturally call for answers from those implicated by it; and that I, as one of them, had already requested that it might be communicated, together with my remarks upon it. Under those circumstances the President declined communicating the letter called for, unless the House, upon a knowledge of them, should desire it—in which case he informed them that it would be communicated, together with my report upon it.

All this was known to Mr. Russell when he left the city; and it is presumed that he also knew that the call for the letter would not be renewed by the mover of the resolution of the 19th of April; yet Mr. Russell went to Philadelphia, and there caused to be printed in the National Gazette of the 10th of May, *another variety* of his letter of 11th February, 1815, from Paris, to Mr. Monroe—still differing from the original—differing also from the duplicate, which he had delivered at the Department, but satisfactorily proving with what *ingenuity* he had told me that the two last leaves of his original draft had not been found at Mendon, and that he had been obliged to supply their contents in the duplicate from memory—the *triplicate* of the National Gazette was accompanied by an editorial article, vouching for its authenticity as a copy—vouching *from good authority* that Mr. Russell had had *no share* in the call (of the House of the 19th of April) for the private letter—and commenting in a style, the apologetical character of which indicates its origin, upon the privacy, which it urged was not secrecy, of the letter; upon the professions of Mr. Russell's respect for his col-

leagues in the letter, and upon the frequency of such personal and separate explanations in the annals of diplomacy—all this, upon the face of it, came directly or indirectly from Mr. Russell himself. The letter, as published in the National Gazette, was not marked *private*, as the original had been, which was now known from the President's message. It had discarded the panegyric upon the disfranchised fishermen—the self-eulogium for enlarged patriotism and subdued predilections and prepossessions—the prophetic inspirations, and the trust in God and in the valour of the West, which were in the duplicate and not in the original. It had stripped off all the cumulative epithets added in the duplicate to the charge of a wilful violation of instructions—it had even dismissed the charge of having violated their instructions relating to the Mississippi, *as construed by themselves*, and the emphatic citation of the *explicit* and *implicit* CANCELLED instructions of 15th April, 1813. But it had retained the *interpolation* of "*we directly violated our instructions*," and the substitution of "we could" for "I can," in that luminous exposition of atmospheric humidities and incessant fogs which had been discovered to have so nearly annulled the value of the Labrador fishery; and although the cancelled instructions were no longer cited in the text of the letter, yet to support the remnant of interpolated charge, that they had been violated, they were expressly subjoined as an appendage to the publication, with an abundance of italicised words to point out the heinousness of this violation; and this was *after* the interview in which I had shown to Mr. Russell at the Department, the record, not only of the letter of 4th October, 1814, to the Commissioners, which had not, but that of the letter of the 19th October, 1814, which had been received before the proposal, upon which the charge of violation rested, had been made to the British plenipotentiaries. The triplicate of the National Gazette had restored the postscript of the original, which had been dismissed from the duplicate, containing the three hopeful OTHER ways of proceeding devised by Mr. Russell's resources of negotiation, two months after the negotiation was over, instead of the course which we did pursue, the word *other* only being omitted. The triplicate of the National Gazette, in short, proved that the original draft from Mendon had been complete; and that all its own interpolations, as well as those of the duplicate, and its omissions, had been owing, not to deficiencies of memory, but to superfluities of invention.

Such is the true history of the tactics of Mr. Russell, in bringing before the House of Representatives and the nation, his impeachment of his colleagues, the majority of the Ghent mission—that it was such of me, is fully admitted by himself in the Boston Statesman, by styling me the *adverse party*, and in that publication he sufficiently indicates his disposition in the progress of his operations to concentrate his charges against me alone. Be it so. In my remarks upon the original and duplicate of his accusatory letter, I styled it a *laborious tissue of misrepresentations*. He complains of

this as of *virulence* and *acrimony*, which he boasts of not having returned. If virulence and acrimony had no other vehicle than harsh language, if they could be disguised under professions of unfeigned respect, however cautiously Mr. Russell had abstained from them in his original letter from Paris, he had been much less observant of that decorum in the duplicate, prepared with new relishes of crimination to suit the appetite of political hatred; and the publication in the Boston Statesman is by no means sparing either of virulence or acrimony against me. The whole tenour of his argument in the original letter, against his colleagues, was sneering and sarcastic. In the Boston Statesman, besides direct charges against me, of *disingenuousness*, of having made an *unprincipled* and *unprovoked* attack upon him, of disrespect to the House of Representatives, of infirmities of temper and taste, and of being a dreaming visionary, he tries even the temper of his wit to assail me, and by a heavy joke upon an expression used in my remarks, indulges his own *instinct* of misquoting my words to make them appear ridiculous. If this be Mr. Russell's mildness and moderation, it looks very much like the virulence and acrimony of others. In the transactions of human society, there are deeds of which no adequate idea can be conveyed in the terms of courtesy and urbanity; yet I admit the obligation of a public man to meet with coolness and self-command the vilest artifices, even of fraud and malignity, to rob him of the most precious of human possessions, his good name—"thrice happy they who master so their blood." If in my former remarks upon Mr. Russell's Janus-faced letter, or in this refutation of his new and direct personal attack upon my reputation, I have, even in word, transgressed the rule of decency, which, under every provocation, it is still the duty of my station and of my character to observe, though, unconscious, myself, of the offence, I submit to the impartial judgment of others, and throw myself upon the candour of my country for its forgiveness. This paper has been confined to a demonstration of the frailty or the pliability of Mr. Russell's memory, in relation to facts altogether recent. As, upon an issue of facts, I do not even now ask that my word alone should pass for conclusive, statements of Mr. Brent and Mr. Bailey, relative to the production of Mr. Russell's letter before the House of Representatives, and to the incidents from which Mr. Russell has attempted to extort a charge of disingenuousness against me, are subjoined. My only wish is, that they should be attentively compared with Mr. Russell's narrative.

In another paper I shall prove that Mr. Russell's reminiscences of the proceedings at Ghent, bear the same character of *imagination* substituted for *memory;* and that what he calls "the real history of the transaction," [the fishery and Mississippi navigation proposal,] contradictory to the statement which I had made in my remarks, is utterly destitute of foundation.

JOHN QUINCY ADAMS.

Washington, 13th July, 1822.

Mr. Brent's Statement.

On the 20th of April of the present year, I called upon Mr. Russell at his lodgings in this city, without the knowledge or direction of any other person whatever, to inquire of him, as I did, whether he could and would furnish the Department of State with a copy of his letter from Paris to the Secretary of State, which was referred to in a resolution that I supposed to be then on its passage (but which had actually passed the day before,) through the House of Representatives, upon the motion of Doctor Floyd, in case the said resolution should be adopted by the House, and a regular application were made to him for it; observing to him distinctly and particularly, however, that I had no authority to make such an application myself, and that my entire object was to ascertain the facts just stated. In answer to this inquiry, Mr. Russell informed me that his daughter had recently transmitted to him the draft of the letter in question; that he had it thereby in his power to give a transcript of it, and would set about making one immediately, which, when finished, he would deliver to the President. Upon which I remarked, that this seemed to be the proper course, the original having been addressed to him, the President, when Secretary of State. I then observed to Mr. Russell, that he had better deliver it as a duplicate than as a copy; that he knew the original was not to be found upon the files of the Department of State, and that this was the common form with regard to all such communications. He seemed pleased with the suggestion, and said that he would conform to it, without giving me the slightest intimation that he would prefer giving a copy, as such, or that he would furnish any other than a duplicate of the identical letter spoken of and referred to, which had been transmitted by him from Paris to the then Secretary of State. I was prompted by a double motive to this inquiry—first, by an habitual wish that the Department to which I belonged should always be prepared to furnish what might be required of it by the House of Representatives; and, secondly, by an apprehension that, if it were not so prepared in this particular case, unjust imputations might be made against the Head of that Department, which I was desirous of obviating. In this interview, Mr. Russell told me that it was at his instance Doctor Floyd had submitted his last resolution to the House of Representatives; that he was influenced, himself, by the wish that his letter should be communicated to Congress, for his justification as to the part he had taken in the negotiation of the treaty of Ghent, with regard to the fisheries; but that the same gentleman's first motion upon the same subject, was made without his knowledge or advice. On the 22d of the same month, Mr. Russell handed to me, in my room at the Department of State, in the absence of the Secretary, with a request that I would deliver it over to him, an open letter, marked "Duplicate," a copy of which was communicated by the President to the House of Representatives, on the 7th of May last; observing, when he did so, that he felt no particular solicitude about it, and requesting that it might be returned to him, if not used by the Department. A day or two afterwards this paper was put into the hands of Mr. Thomas Thruston, one of the clerks of the office, to be copied. Perceiving that it bore date at Paris, on the 11th of February, 1822, when Mr. Russell was known to be attending the session of Congress in this city, as a member of the House of Representatives, this young gentleman asked my advice whether he should insert that date in the copy or not; and I told him, without hesitation, to insert 1816 instead of 1822, as Mr. Russell had evidently, from inadvertence, made a mistake in the date. Mr. Thruston gave it that date accordingly, and made a correspondent alteration in the paper itself, which he was transcribing, under the impression that he was likewise authorized to do so, and that it would never produce criticism of any sort. When Mr. Adams came to be apprized of these circumstances, particularly of the alteration in the date of the "duplicate" paper, he manifested and expressed much surprise and displeasure upon the occasion. But Mr. Russell, whom I saw immediately after they happened, and to whom I communicated what had

been done, expressed his full and entire approbation of it; and the next day he brought to the office the draught from which he stated the "duplicate" was prepared by him, bearing date Paris, 11th February, 1815, which he particularly showed to me, as a corroborative justification to the Department of State for the alteration that had been made in the date of his paper. It was then, I think, that I informed him of the substitution which had been made in the office copy of the year 1815 for that of 1816, to correct our own mistake; and he authorized and requested me to have a like alteration made in his "duplicate," which was accordingly done. Mr. Russell, upon this occasion, again expressed his indifference as to the determination of the Executive with regard to this "duplicate," and repeated his request that it should be returned to him if not used.

In one of our conversations I asked him why he had delivered that paper to me, and not to the President, to whom he had said he would deliver it? His reply was, that he had done so because he deemed that course most respectful to the Department of State, being under the impression, notwithstanding my declaration to the contrary, that I had sounded him upon the subject of the paper in question by authority, (meaning, I presumed, by direction of the Secretary of State,) and that it was actually required at the Department of State.

In a conversation between Mr. Russell and myself, on the 1st May, in Mr. Bailey's room, at the Department of State, in the presence and hearing of that gentleman, he fully and expressly admitted and confirmed the correctness of the statement given in this paper of the conversation between us of the 20th of April, at his lodgings, with regard to the facts that the call of Doctor Floyd for his letter had been made at his suggestion, and that I mentioned to him I had no authority to make an application to him for a copy of that letter, and that I made none.

DANIEL BRENT.

Washington, 10th July, 1822.

Mr. Bailey's Statement.

Several days after the passage of the resolution of the House of Representatives of the United States, of 17th January, 1822, moved by Mr. Floyd, and calling on the President for copies of certain papers relative to the negotiations at Ghent, but before the copies had been communicated to the House, Mr. Russell, of the House, called at my room in the Department of State, and expressed a wish to see a letter addressed by himself, separately, at Ghent, to the then Secretary of State. He stated that the present Secretary of State had mentioned the letter to him, and had desired to know whether it was his (Mr. Russell's) wish that this letter should be communicated to the House with other papers embraced by the above call, or not. This letter, (a short one, dated "Ghent, 25th December, 1814,") was accordingly shown to Mr. Russell by me, in a volume containing the original communications from our Plenipotentiaries at Ghent, which had been bound and lettered in the Department several years before. Mr. Russell, on reading the letter, said that he saw no objection to the communication of it, and asked me if I saw any. The reply was, that none was seen. He said that the concluding paragraph, as it related to his return to Sweden, and not at all to the negotiations at Ghent, did not require to be communicated to the House. I requested him to mark such part as he wished communicated. This he did; and, conformably to this, the copy was made, by subsequent direction of the Secretary of State, and thus it appears in the printed copy, p. 50.

At the same time, or very soon after, (I do not remember which,) Mr. Russell expressed a wish that the letter might be found and communicated, which, in his letter of 25th December, 1814, he intimated his intention of writing. The wish was repeated at subsequent times, both at my room and elsewhere; and much desire was manifested by him on the subject. Mr. Russell and myself together, as well as myself separately, examined at different times the

bound volume above-named, and also other files, on which, if mislaid, the letter would most probably have been placed; but no trace of it was found. At his suggestion I made inquiry of the Secretary and of the Chief Clerk; but they had no knowledge of such letter. The Secretary informed me that his first knowledge that such a letter had been written, was from Mr. Russell's declaration to him since the call of 17th January; and that the existence even of Mr. Russell's letter of 25th December, 1814, was unknown to him previous to his examination of the files in consequence of said call.

Mr. Russell, while making the above inquiries for his letter of the 11th February, 1815, remarked to me, that he had not a copy of it here, but had at home, (in Massachusetts,) and that he could get a copy by writing to his daughter, there; but supposed that would be too late for a compliance with the (first) call. He asked me if I supposed a copy, so made out, would be received and communicated to the House with the other papers. I replied that I did not know sufficiently what was usual on such occasions. After he had delivered the "duplicate" at the Department, he told me that he had written to his daughter for the copy, and that she had sent it.

While Mr. Russell, at his first visit, was examining various records of the office, he noticed a paragraph in the instructions to the Commissioners of peace of 15th April, 1813, respecting British traders within our limits; a paragraph which was omitted in the copy sent to Congress by Mr. Madison with his message of 13th October, 1814, (see Wait's State Papers, vol. 9, p. 357,) and which, it is believed, was never published till it appeared in the National Gazette of 10th May, 1822. Of this Mr. Russell requested of me a copy. On direction of the Secretary, I made and sent to him the copy: and, several weeks after, (I think early in April,) on his remarking to me that that copy was mislaid or not found, and asking another copy, a second was made and sent to him.

Soon after the call of 19th April, Mr. Russell was at my room, and said (wholly spontaneously) that Mr. Floyd had made his motion for that call *entirely* without his knowledge, or without consulting with him, or words to that effect. He also said he did not know Mr. Floyd's motive for making his first motion (for the call of 17th January.)

On receiving the duplicate, the Secretary of State gave it to me to be copied; for which purpose it was handed to Mr. Thruston. The date having been altered from 1822 to 1816, as stated by Mr. Brent, the Secretary, on seeing the alteration, expressed distinctly his displeasure at the circumstance. When Mr. Russell next came to the Department, Mr. Brent, in my presence, mentioned to him the incident of the alteration from 1822 to 1816; and (such is strongly my impression, scarcely leaving a doubt, though Mr. Brent is uncertain whether this intimation happened at this or the next visit of Mr. Russell,) intimated that 1816 was put by mistake for 1815, and that 1815 would be the reading of the copy for the House, if such was Mr. Russell's pleasure. Mr. Russell not only assented to the alteration, (to 1815,) but requested that it might be read thus, in a manner more emphatic and formal than an ordinary request; purporting, that he wished this declaration of his to be taken as authority for the alteration. And, at his next call, he brought with him the draught from which he made the duplicate, and, after exhibiting its date to Mr. Brent, in his room, brought it to me, to show that "1822" was a mistake in copying. The draught was plainly "1815."

When the copy was made for the House, the Secretary was anxious that it should conform with scrupulous exactness to the paper deposited by Mr. Russel, with the sole exception of the date, which he wished modified according to Mr. Russell's special request.

On the 1st of May, Mr. Russell and Mr. Brent were in my room and Mr. Brent recapitulated the conversation between himself and Mr. Russell, on the 20th April, when Mr. Brent made certain inquiries respecting Mr. Russell's letter. The recapitulation in substance stated, that Mr. Brent informed Mr.

Russell, that his inquiries were wholly without the authority of any other person; that his object was to know whether Mr. Russell could and would furnish the letter, if it should be wanted, and if he should be applied to for it; and that Mr. Russell told Mr. Brent that he could and would furnish it to the President; and that he further told Mr. Brent, (on Mr. Brent's inquiry,) that Mr. Floyd had made his (second) motion on his (Mr. Russell's) suggestion. Mr. Russell assented to the correctness of this recapitulation, explaining the last observation by saying, that Mr. Floyd, before he moved the second call, asked him if he could give him (Mr. Floyd) a copy of the letter, and that he (Mr. Russell) declined, and told Mr. Floyd that if he wished a copy he must move a call for it.

JOHN BAILEY.

Washington, 10th July, 1822.

From the National Intelligencer of August 7, 1822.

TO THE EDITORS.

In the reply printed in the National Intelligencer of the 17th ultimo, to a publication by Mr. Jonathan Russell in the Boston Statesman, of the 27th of June preceding, it was stated that the subject would be resumed in another paper. That paper, with others elucidating all the topics of general interest discussed in Mr. Russell's letter, has been prepared, but will be presented to the public in another form. Mr. Russell's letter from Paris, of 11th February, 1815, was ostensibly a vindication of himself and his motives against an accusation instituted by himself—self-defence against self-impeachment! The *substance* was, a secret impeachment of the majority of his colleagues before their common superior authority. That accusation he saw fit, during the late session of Congress, to bring before the Legislative Assembly of which he was a member, and shortly afterwards to produce before the public, in newspapers, at Philadelphia and at Boston. If, in meeting this accusation wherever it has appeared visible and tangible, I have been compelled to present myself more than once to the public attention, it has been under circumstances deeply mortifying to me, and assuredly not of my own choosing. I have been called to repel a succession of charges, supported by the name of a man high in the confidence of the country; an associate in the trust which he substantially accuses me of having betrayed, and implicating the character, conduct, and memory of other citizens employed on the same service. It has, indeed, recently been suggested that this is a mere personal controversy between Mr. Russell and me, with which the public have no concern. And why was it brought before the public? So long as the purport of Mr. Russell's letter was merely propagated in whispers—just hinted in anonymous paragraphs of newspapers, and *hoped not to be true* in charitable letters from Washington, however infamous the imputations with which it was occasionally bound up and circulated, a man conscious of his innocence, and secure in the uprightness of his intentions, might

overlook and despise it. But, when made the object of two successive legislative calls for obsolete and forgotten documents, trumpeted beforehand throughout the Union, as fraught with disclosures which were to blast a reputation worthless in the estimation of its possessor, if not unsullied; when pertinaciously obtruded upon Congress and upon the nation, by a colleague in the transaction denounced, by a participator in the act reprobated by himself, principles and duties of a higher order than those of mere personal delicacy commanded me to solicit the attention, first, of the House of Representatives, and, secondly, of the nation, to my defence and that of my colleagues, arraigned before them. That defence has been, and will be, strictly confined to the same limits as the attack to which it is opposed; and if, in the course of it, the attack itself has necessarily been made to recoil upon the accuser, it was because nothing could more forcibly tend to show the futility of the charges than an exposition of the conduct of him who produced them. Let me then be permitted to say, that this is not a mere personal controversy between Mr. Russell and me, with which the public have no concern. It did not so begin, nor can it so end. The negotiation at Ghent was an event of great importance in the history of this Union. It was conducted by five Commissioners, citizens of different sections of the country. One of the great objections to the entrusting of critical negotiations to Commissions is, their inherent tendency to internal dissentions, injurious to the common cause. Of these dissentions I believe there were as few at Ghent as in any negotiation, by Commissioners of equal number, upon historical record. Until the last winter, I had flattered myself that *none* of those differences of opinion had been of a character which it would have been ever necessary to disclose to the world. In making the draught of the joint letter of 25th December, 1814, to the Secretary of State, I had, in speaking of the proposition made to the British plenipotentiaries on the first of that month, said, "To place both points beyond controversy, *we offered* to admit an article confirming both rights," (to the Mississippi navigation and the fisheries.) The draught having been passed round to all the members of the mission for revisal, was brought back to me by Mr. Russell, with an alteration, which he said was desired, not by him, but by Mr. Clay, to say, instead of "*we offered*," "a majority of us determined to offer." Now, although the expressions first used had been strictly correct, and the offer had been actually made by the whole mission, I readily assented to the alteration, not imagining that Mr. Russell's purpose was to lay it as a corner-stone for future fabrics, either of self-accusation and defence, or of social discord and reproach. He now alleges it as a self-contradiction of mine, that I say the proposition was made by the whole mission, although in the joint letter of 25th December, it was said, a majority *determined* to offer it. But the contradiction is of his own imagination. The determination was taken by the majority. The offer was made by the whole. Mr. Russell proposed another amendment, for which

he neither mentioned, nor did I then suspect his motive. The letter says, "We contended that the whole treaty of 1783 must be considered as one entire and permanent compact, not liable, like ordinary treaties, to be abrogated by a subsequent war between the parties to it." Mr. Russell's proposal was to change the word *must* for *might*—to read "we contended that the whole treaty *might* be considered," &c. But to this alteration I objected that it would not state the facts as they were—that we had actually contended that it *must*, and not that it *might* be so considered; and Mr. Russell immediately yielded to this objection, which he could not dispute. He assented to this passage of the letter, as it was first written, and as it now stands. The use which he even then proposed to make of the alteration, if it had been admitted, I now perceive, but had then too sincere a regard for Mr. Russell to surmise.

There were, in the course of the negotiation, many differences of opinion, and many votes taken; but, excepting this solitary case, no one member of the mission thought it necessary to record the fact, or to make it known even to the American government. As *all* the members of the mission had finally concurred in the proposition upon which the vote was taken, and had signed their names to it in the communications to the British plenipotentiaries; and as there was *then* no allegation by any one that it was not fully warranted by our instructions, I certainly thought there was as little necessity for announcing to our government that a vote had been taken upon this proposition, as upon any other question which had occurred—yet, when it was desired by any member of the mission, that the proposition to which *all* had pledged their names and signatures to the adverse party and the world, should be recorded, as having been previously determined by a majority only, I could have no objection to its being so stated. Mr. Clay did not think it necessary either to accuse or to defend himself for having been in the minority. The course pursued by Mr. Russell was neither candid towards his colleagues, nor friendly to the *liberties* of his country. Under the guise of accusing himself, he became the secret delator of his colleagues. But his letter from Paris was not confined to its professed object of vindicating himself for his vote upon the Mississippi proposition. He travelled out of the record, and racked his ingenuity and his learning to refute the principle assumed at the proposal of Mr. Clay himself—the principle upon which *no* vote had been taken in the mission; but which had been adopted and inserted in the note of 10th November, 1814, by unanimous consent; the principle that, from the nature of the fishing liberties, and the peculiar character of the treaty of 1783, they were *not* abrogated by the war. And now, seven years afterwards, when, by the maintenance of that very principle, we had, in a subsequent negotiation with Great Britain, secured in a new compromise, without abandoning the principle, the whole essential interest in the fishing liberties; when, by the same negotiation, we had obtained the abandonment by Great Britain of her own ground of

claim to the navigation of the Mississippi, and when that negotiation had been conducted under instructions entirely drawn up by me; a call from the House of Representatives comes for the residue of the Ghent documents. Mr. Russell, having it placed at his own option whether his old denunciation of himself, and his disagreement with the majority, shall or shall not be communicated to the House, deliberately decides that it *shall*—and gives himself and others no repose, till he has brought before Congress and the nation, his bill of attainder against his colleagues, new vamped to suit the political passions of the day; it is now too late to say that this is a mere personal controversy between Mr. Russell and me with which the public have no concern.

The principle asserted in the letter from Paris, that *we were left without any title to the fishing liberty whatsoever*, was in the highest degree pernicious to one of the most important interests of this Union. The pretension that our only title to them had been a temporary grant of the British king, revokable at his pleasure, was equally unfounded in law and in fact. The reason assigned for the averment of its extinction—that war abrogates *all* treaties, and all articles of every treaty—is not warranted by the law of nations; and if it were, would not warrant the conclusion drawn from it. The character and value of the proposition relating to the Mississippi, are in the letter from Paris totally misrepresented and perverted by exaggeration. The value of the fishing liberty is equally misrepresented and perverted by disparagement. The possession of this liberty has twice been the turning hinge upon which wars with Great Britain have been concluded. If upon either of those occasions the principles asserted in Mr. Russell's letter had prevailed with the American negotiators, our *rights* in the Newfoundland, Gulf of St. Lawrence, and Labrador fishery, would have been lost. The same question may very probably arise again. I undertake to prove that the *argument*, as Mr. Russell calls it, of his letter, is in all its parts as untenable as it was unpropitious to the cause of his country.

I have no intention, however, of pursuing this controversy further in the newspapers. I propose to publish in one collection, the Ghent documents called for by the resolution of the House of Representatives; the message of the President to the House, with Mr. Russell's letters and my remarks; his publication of 27th June, in the Boston Statesman, and mine in answer thereto in the National Intelligencer, with other papers, rectifying other representations of Mr. Russell: and discussing the effect of war upon treaties and treaty stipulations; the value of the Mississippi navigation to the British, and of the fishing liberty to us and the rights by which we have held and still hold them. That there ever was any difference of opinion between the American plenipotentiaries at Ghent upon measures in which they all finally concurred, would never have been made known to the public by *me*. Satisfied with an equal share of responsibility, for all which they had done, con-

tented and grateful for the satisfaction of our common country with the general result of our services, I had no private interests or feelings to indulge, at the expense of others, and my earnest desire would have been, to have seen in every member of the mission, for the rest of my days, no other than a friend and a brother. Disappointed in this wish, my next hope is, that even the discords of Ghent may be turned to the promotion of future harmony in the Union. From the nature of our federative constitution, it is probable that hereafter, as heretofore, the most important negotiations with foreign powers will be committed to joint missions of several members. To every such mission and to all its members the Ghent negotiation will afford instructive lessons, as well by its union as by its divisions. The conduct of Mr. Russell will afford a negative instruction of deep import. It will teach them to beware of leaguing invidious and imaginary sectional or party feelings with the purposes of the enemy, against our rights—of assuming the argument of the enemy against ourselves—of proclaiming, without necessity, differences of opinion upon rejected propositions—of secret denunciations in the shape of self-vindication—of crude and shallow dissertations against essential interests and just claims, and of interpolating public papers to adapt them to the purposes of the moment. It will teach them to have a higher sense of the rights and liberties of this nation, than to believe them to be held at the will of a British king; and it will warn them to turn their talents to better uses than that of sacrificing the essential interests of their country. These are *public* concerns of great moment, and a just understanding of them in every part of the Union is indissolubly connected with a just estimate of the conduct of the majority of the Ghent mission, held forth to public censure by one of their colleagues. For a view of the *whole* ground it will be indispensable to compare the *documents* of the negotiation with the references of both parties to them in the discussion, and to that end it will be necessary that they should all be included in *one* publication. I ask of the candour of my countrymen to be assured, that this publication will be addressed to no temporary purposes, to no party feeling, to no sectional passions, but to the whole nation and to posterity, upon objects which, although implicating immediately only the conduct of the negotiators at Ghent, are of deep and permanent interest to themselves.

JOHN QUINCY ADAMS.

August 5, 1822.

FURTHER STRICTURES

ON MR. RUSSELL'S REPRESENTATIONS AND ESTIMATES.

I. Navigation of the Mississippi—Worthless to the British.

In the joint despatch of the 25th of December, 1814, to the Secretary of State, signed by *all* the members of the American mission at Ghent, a narrative was given of the circumstances, under which the proposal had been made to the British plenipotentiaries and rejected by them, of a stipulation, confirming the provisions of the treaty of 1783, in regard to the fishing rights and liberties of the people of the United States, and to the right of the British to navigate the Mississippi. It was there stated, that *after* the American mission, in answer to the notification from the British, that their government did not intend to *grant* anew the fishing liberties, had asserted the principle, that from the peculiar character of the treaty of 1783, and the nature of those rights and liberties, no further stipulation had been deemed necessary by the government of the United States, to entitle them to the full enjoyment of all of them; *after* they had sent to the British plenipotentiaries, on the 10th of November, 1814, a project of a treaty, containing no article or stipulation on the subject; *after* the British plenipotentiaries had, on the 26*th of November*, returned that project with alterations proposed by them, one of which was a stipulation that British subjects should at all times, have access to the river Mississippi and the free navigation of the river—to meet this demand, and to place both points beyond all future controversy, a *majority* of the mission *determined* to offer to admit an article confirming both rights.

Nothing can be more clear and explicit than this statement that the determination of the majority was taken after the 26*th of November*, 1814. Yet directly in the face of it, Mr. Russell, in the Boston Statesman of 27 June, affirms that at the mission meetings of the 23th and 29th of November, "whatever might have been "said in relation to the Mississippi, on account of the alteration, "respecting it, made in the 8th article of our project, by the Bri- "tish plenipotentiaries, *no new resolution was there taken by the "American mission to offer the navigation of that river for the fishing "privilege.* This offer was made on the 1st of December, in vir- "tue of the vote taken before the 10th of November, and which, "although suspended, had not been reconsidered or cancelled." And he adds, "I am the more confident in this statement, as I dis- "tinctly remember that when that offer was actually made, it was "unexpected by A MAJORITY OF THE MISSION. Mr. Bayard, in re- "turning home from the house of the British ministers, where the "conference of the 1st of December had been holden, very expli- "citly declared to Mr. Clay and to me, his dissatisfaction that this "offer had been made *without his having been recently consulted in "relation to it.* I dare, in regard to these facts, to appeal to the "recollection of Mr. Clay, in confirmation of my own."

Marvellous indeed! So then this wonder-working and terrible proposal, this portentous sacrifice of the peace, comfort, and safety of the western world, was actually made in full conference with the British plenipotentiaries, not by a majority, but by a MINORITY, of the American mission. And Mr. Bayard, who had changed his mind, stood by, and saw the proposal made, heard it discussed, saw it entered on the protocol as the proposal of the American plenipotentiaries, and afterwards signed a letter declaring he had no objection to it; while all the time he was not for, but against it. And Mr. Clay and Mr. Russell, who from before the 10th of November had known the change of Mr. Bayard's mind, they too, witnessed this insolent usurpation, by the minority, of the name and rights of the whole mission, without daring to avow an objection to it either in the presence of, or in correspondence with, the British plenipotentiaries, or in the meetings of the mission itself. Mr. Bayard contents himself with whispering his dissatisfaction to Mr. Clay and Mr. Russell; and they, instead of vindicating the insulted rights of the majority, reserve it as a secret, which Mr. Russell, seven years after the death of Mr. Bayard, divulges to the world.

The anecdote is an outrage on the memory of Mr. Bayard. Mr. Clay will not respond affirmatively to the appeal of Mr. Russell. I have no occasion for appealing in this case to the recollection of any one. I speak not only from the express and positive testimony of the joint despatch of 25 December, 1814, but from the record of a private diary, kept by me at the time, in which are minuted from day to day, with all the accuracy and detail in my power, the proceedings as well of the mission, as of both missions in their conferences: and I now affirm, that on the 28th of November, 1814, after a discussion of more than five hours, in which every member of the mission, except Mr. Russell, took part, a vote was taken upon the proposal of Mr. Gallatin, to accept the proposed alteration of the 8th article of the project, presented by the British plenipotentiaries, relating to the navigation of the Mississippi, adding to it a counter stipulation for securing the fishing liberties within exclusive British jurisdiction; that a *majority* of the mission voted for this proposal, and that Mr. Gallatin should prepare for consideration the next day, an amendment to the 8th article conformably;—that on the 29th of November Mr. Gallatin did produce this amendment, which, after another long discussion, was agreed to, and was the same offered to the British plenipotentiaries, as appears by the protocol of the 1st of December, 1814. It was to this vote of the majority, and to this alone, that the joint despatch of 25 December, 1814, referred; and it was to this vote, thus stated upon the face of the despatch, that Mr. Russell referred in his separate letter of the same date, when he said that he had been on that occasion in the minority. Yet it was not without reason that in my former remarks upon his letters I said, he gave, *it may be*, a silent vote against the proposal: for, from the minutes

in my diary, although I know that a vote was taken, and that there was a majority in favour of the proposal, yet it does not appear that Mr. Russell voted against it; and from an observation made at the time by Mr. Gallatin, to which Mr. Russell expressed no dissent, I should now rather conclude that he did not on that day vote at all. It was not unusual when a vote was taken, as soon as a majority was ascertained, to omit calling for the vote of the fifth member; and Mr. Russell was not unwilling to avail himself of these opportunities to avoid voting at all. However that fact may be, I repeat that he took no part in the discussion, and that after the vote was taken, it was Mr. Gallatin's impression, which he expressed in Mr. Russell's presence without being contradicted by him, that he was then *in favour* of the proposal.

The proposition to which Mr. Russell says *he objected*, [he should have said, against which he voted,] *before* the 10th of November, was *not* substantially that first offered on the 1st of December; nor was the latter offered in virtue of the vote taken before the 10th of November. The joint despatch of 25th December, says not one word of the vote taken *before* the 10th of November: nor had Mr. Russell's separate letter of 25th December, any reference to it whatever. His subsequent letters have indeed attempted to confound them together, for the purpose of urging against the proposition which *was* made, the arguments, some of which had been used by Mr. Clay, against that which was *not* made. But these are all *corrections made to suit present purposes*. By comparing together the article upon which the vote was taken *before* the 10th of November, (I shall soon say when) as Mr. Russell has published it in the Boston Statesman, and the proposal actually made as appears in the protocol of 1st December, it will immediately be perceived, that they are essentially different; and that the latter could not have been offered as the act of the American mission, by virtue of the vote taken upon the former.

The history of the vote taken *before* the 10th of November is as follows:

On the 29th of October, 1814, it was agreed at a meeting of the mission, that a draught of a project of a treaty should be made, to be discussed by the mission, and, as might be after such discussion settled by them, presented to the British plenipotentiaries. The task of making this draught was assigned to Mr Gallatin and me. Mr. Gallatin engaged to draw up the articles respecting the boundaries and Indians, and I undertook to prepare those respecting impressment, blockade, and indemnities.

At a meeting of the mission the next day, the draughts of the articles were produced; and among those offered by Mr. Gallatin was the article cited by Mr. Russell in the Boston Statesman of 27th June last. As it was finally set aside, I have no copy of it; but have no reason to doubt that it was in the words cited by Mr. Russell. At this meeting, Mr. Clay objected to it. Mr. Russell was not present.

The article was discussed further, chiefly between Mr. Gallatin and Mr. Clay, at meetings of the mission on the 31st of October, and on the 1st, 2d, and 3d of November.

I had till then taken no part in the discussion. The following are extracts from my diary of subsequent dates, when, at meetings of the mission, all the articles of the draught were discussed.

4 November, 1814. "The great difficulty was with regard to "the fisheries. Mr. Gallatin's draught proposed the renewal of the "right of fishing and drying fish within the British jurisdiction, to- "gether with the right of the British to navigate the Mississippi, "both taken from the peace of 1783. I was in favour of this. Mr. "Clay has an insuperable objection to the renewal of the right to "the British of navigating the Mississippi. I then declared myself "prepared either to propose Mr. Gallatin's article, or to take the "ground, that the whole right to the fisheries was *recognised* as a "part of our national independence; that it could not be abrogated "by the war, and needed no stipulation for its renewal. Mr. Clay "was averse to either of the courses proposed, and said that after "all if the British plenipotentaries should insist upon this point, we "should *all* finally sign the treaty without the provision respect- "ing the fishery. Mr. Russell expressed some doubt whether he "*would* sign without it; and I explicitly declared that I would not, "without further instructions—I could not say that I would, with "them."

5 November, 1814. "The article concerning the fisheries and "the navigation of the Mississippi as drawn by Mr. Gallatin was "further debated, and the vote taken upon it. Mr. Clay and Mr. "Russell voted against it—Mr. Bayard, Mr. Gallatin, and myself "for proposing it. After the vote was taken, Mr. Clay said that "he should not sign the communication by which the proposal "would be made."

7 November, 1814. "Mr. Clay proposed a paragraph for the "note to be sent to the British plenipotentiaries, as a substitute in- "stead of the article respecting the fisheries and the navigation of "the Mississippi, which had passed by vote on Saturday. Mr. "Clay said, that in declaring at that time that he should not sign "the note accompanying the project, if it included Mr. Gallatin's "article, he had not intended that it should in any manner affect "the minds of any of us. If the article should be proposed and "accepted, and a treaty otherwise not exceptionable should be "obtainable he might perhaps ultimately accede to it; but the "object was in his view so important, that he could not reconcile "it to himself to agree in making the proposal. His proposed pa- "ragraph took the ground which I had originally suggested that *all* "the fishery rights formed a part of the recognition of our Inde- "pendence, and as such, were by our instructions excluded from "discussion. I said I should have preferred the proposal of Mr. "Gallatin's article, as placing the subject *out of controversy;* but "that as we could not be unanimous for that, I was willing to take

"Mr. Clay's paragraph, by which we should reserve all our rights, "and at the same time execute our instructions. Mr. Bayard said, "that rather than differ among ourselves, he would agree to sub- "stitute Mr. Clay's paragraph, instead of the proposed article, and "this was ultimately assented to by us all."

Mr. Russell has taken infinite pains to fasten exclusively upon me, the imputation of being the *only* asserter of this doctrine, that from the peculiar character of the treaty of 1783, and from the nature of the fishing rights and liberties, they had none of them been abrogated by the war, and needed no new stipulation to preserve them. And it is this doctrine, which in the calmness of his urbanity he styles the *dream* of a visionary.

I certainly never should have claimed the credit of having been alone in the assertion of this principle. I should have been willing that *all* my colleagues, who united with me in asserting it in the note of 10th November, 1814, at Ghent, signed by them all, should have gone through life with the credit, and have left to posterity the reputation, of having had each an equal share in this assertion. But Mr. Russell has effectually disclaimed all his portion of it, and its consequences. He has represented it as, on the part of the minority, a PRETEXT *to preserve the fishing privilege*, and to get rid of a proposition confirmative of the British right to the navigation of the Mississippi. He says he does not recollect that any member of the mission, except myself, appeared to be a very zealous believer in that doctrine. I thank Mr. Russell for that concession. If there was moral virtue or has been successful result in the assertion of that principle to preserve the fishing liberties, I ask no more than an equal share in the esteem of my country, for having asserted it, with those of my colleagues who are yet willing to bear the imputation, not as a *pretext*, but with sincerity of heart, and as very zealous believers in it. But were every other living member of the mission to say, and were the spirit of Bayard from the tomb to join with them and declare, that they *assumed* this principle only in the spirit of compromise, and as a *pretext*, but that they considered it only as the dream of a visionary, I would answer—the dream of the visionary was an honest dream. He believed what he affirmed and subscribed. And, I might confidently add, it has saved your fisheries. Nor should I need other proof, than the negotiations with Great Britain since the peace, and the convention of 1818.

I would further observe, that if the principle was assumed by the minority in the spirit of compromise, that spirit was much more strongly manifested by the majority, and particularly by me, in accepting this substitute, instead of the article proposed by Mr. Gallatin. I shall assuredly never deny, that from the time when the British plenipotentiaries notified to us, that their government did not intend to grant the fishing liberties without an equivalent, I felt an inexpressible solicitude for their preservation. I have already remarked that this notification was made in terms so indefinite,

that its object apparently was to exclude us from the *whole* of the Newfoundland, Gulf of St. Lawrence, and Labrador fisheries. Mr. Russell has not ventured to contest this position; nor could he have contested it with success. The notification, as entered upon the protocol of conference of 8th August, 1814, made up jointly by both parties, was as follows:

"The British commissioners requested information, whether "the American commissioners were instructed to enter into nego- "tiation on the above points? But before they desired any answer, "they felt it right to communicate the *intentions* of their govern- "ment *as to the North American fisheries*, viz. That the British "government did not intend to *grant* to the United States, gratu- "itously, the privileges formerly *granted* by treaty to them, of "*fishing within the limits of the British sovereignty*, and of using "the shores of the British territories for purposes connected with "the fisheries." Wait's State Papers, vol. 9, p. 330.

The remark upon it, made by the American mission, in their letter to the Secretary of State of 12th August, 1814, was this:

"The extent of what was considered by them as waters pecu- "liarly British, was not stated. From the manner in which they "brought this subject into view, they seemed to wish us to under- "stand, that they were not anxious that it should be discussed, and "that they only intended to give us notice, that these privileges "*had ceased to exist*, and would not be again granted without an "equivalent, nor unless we thought proper to provide expressly in "the treaty of peace for their renewal." *Ibid, p.* 321.

And what were the limits of British sovereignty, as to the North American fisheries? Ask the Abbe Raynal.

"According to natural right, the fishery upon the great bank "*ought* to have been common to all mankind; notwithstanding "which, the two powers that had formed colonies in North Ame- "rica, have made very little difficulty of *appropriating it to them- "selves*. Spain, who alone could have any claim to it, and who, "from the number of her monks, might have pleaded the necessi- "ty of asserting it, entirely gave up the matter at the last peace, "since which time the English and French are the only nations "that frequent these latitudes." *Raynal's History, book* 17.

Ask the commentator on the marine ordinance of Louis XIV, Valin. After assigning *soundings*, as the extent of sovereign jurisdiction, upon the sea, in regard to fisheries, he says:

"As to the right of fishing upon the Bank of Newfoundland, as "that island, which is, as it were, the seat of this fishery, then be- "longed to France, it was so held by the French, that other nations "could naturally fish there only by virtue of the treaties. This "has since changed, by means of the cession of the Island of New- "foundland, made to the English, by the treaty of Utrecht; but "Louis XIV, at the time of that cession, made an express reserva-

" tion of the right of fishing upon the Bank of Newfoundland, in " favour of the French, as before." *Valin, vol. 2, p. 693.*

And Mr. Jefferson, in his Report on the Fisheries, of 1st February, 1791, had said:

" Spain had formerly relinquished her pretensions to a partici- " pation in these fisheries, at the close of the preceding war: and " at the end of this, the adjacent continent and islands being divided " between the United States, the English, and French, (for the last " retained two small islands merely for this object,) the right of fish- " ing was *appropriated* to them also."

I did not entertain a doubt that the object of the British government then was, to exclude us from the whole of this fishery, unless upon our own coast; nor do I now, that if we had then acquiesced in their principle, they would have excluded us from it after the peace entirely.

I did, therefore, feel a deep and earnest solicitude for them. Nor was that solicitude allayed by the discovery that there was in the heart of the mission itself, a disposition and an influence operating against them almost as inflexibly, and, in my estimation, far more dangerously, than the British adversary himself.

There were but two possible ways, after the British notification, of preserving these rights and liberties from total extinction. The one was, by obtaining a new recognition of them in the treaty, which could not be done without offering an equivalent; and the other was, by asserting that they had not been forfeited by the war, and would remain in full vigour, although the treaty should be concluded without such an article.

In preparing the draught of the treaty, Mr. Gallatin had drawn an article, stipulating anew the recognition, and offering, as the equivalent, the recognition of the British right to navigate the Mississippi, contained in the same treaty of 1783, and of which the British plenipotentiaries had demanded the renewal.

Mr. Gallatin was a citizen of the Western Country, and as incapable as *any* other member of the mission, of sacrificing an essential interest of one quarter of the Union, to a minor interest of another. I was, therefore, profoundly mortified to see his article objected to on a principle of *conflicting sectional interest*, and still more so, to hear Mr. Russell observe, after his opinion had been disclosed by his vote, that the fisheries were an interest of a *disaffected* part of the country. I was as far as Mr. Russell from approving the policy or the measures then predominating in New-England: but to cast away and surrender to the enemy the birthright of my country, an interest as lasting as the ocean and the shores of my native land, for a merely momentary aberration, rather of its legislature than its people, was so far from meeting my concurrence, that it sickened my soul to hear it hinted from one of her own sons.

Considered merely and exclusively with reference to *sectional interests*, Mr. Gallatin's proposed article was fair and just. It pro-

posed that both interests should be placed on the same footing on which they had stood before the war. The first and paramount duty of the government was to bring the nation out of the war, with all its great interests *preserved*. It was not to *gain* an advantage for one section, by the *loss* of an advantage to another. The principle of Mr. Gallatin's article was, that neither section should gain or lose by the issue of the war. The principle of the objection to it was, that the West should *gain*, by the *sacrifice* of the interest of the East: and the main motive assigned for it was, that the East was a *disaffected* part of the country.

Much, too, was said of the comparative *value* of the two liberties; not by Mr. Russell, who had not then made, or at least did not disclose, his notable discovery of incessant fogs, and their deleterious effects upon the fisheries. But doubts were expressed, on one side, whether the fisheries were of *much* value: and opinions were very confidently expressed, on the other, that the navigation of the Mississippi would be to the British of *no value*. Neither evidence nor argument was adduced to show the small value of the fisheries. But that the navigation of the Mississippi would be to the British of no value, and of no injury to us, was proved, first, by the experience of thirty years, from the peace of 1783 to the war of 1812, during which they had possessed it without inconvenience to us or benefit to themselves; secondly, by the apparent fact, that after abandoning their claim to a boundary line to the Mississippi, and consequently the power of ever forming any settlement upon its banks, there was neither present nor prospective *interest*, which could make the mere right of navigating it downwards to the ocean, of any value to them. It was absolutely nothing more than a right of travelling upon a highway; and all rational foresight, as well as all past experience, led to the conclusion, that the privilege would remain as it had been, *merely* nominal. The objections against this reasoning were all speculation against fact; all surmises of what might be in future, against the uniform tenour of what had been before. When, afterwards, the proposition of the first of December was actually made to the British plenipotentiaries, the immediate rejection of it by their government, and the reasons which they assigned for rejecting it, demonstrated that *they* considered it at least no equivalent for the part of the fisheries, of which they intended to deprive us: and their final abandonment, without any equivalent, of all claim to it, in negotiating the convention of 1818, completed the proof that they had always considered it as a mere name, the only use they ever could make of which was to obtain, if they could, *something* for renouncing it.*

* I take this opportunity to rectify an inaccuracy in the statement of my remarks upon Mr. Russell's letter, that at the negotiation of that Convention, the navigation of the Mississippi was not even *asked* by the British. On recurring to the documents of that negotiation, I find that it was asked, but easily abandoned. Our Negotiators were instructed not to accede to it.

Mr. Russell says, that I expressed at Ghent *my great contempt* of the British right to reach and navigate the Mississippi: and Mr. Russell's motive for using this expression is as apparent as it is invidious. I never, at Ghent or elsewhere, expressed *contempt* of this right, otherwise than by maintaining, that in the nature of things it must and would be, as it had been, a naked right without use; of no value to them, and of no damage to us. For this opinion my reasons are now before the public; and if a solid answer to them *can* be given, I shall be ready to acknowledge that I have been mistaken in entertaining it. But I shall not take for such answer, any thing that was said at Ghent; and much less any thing since alleged by Mr. Russell. I shall not take for an answer, the immense importance TO US of the Mississippi and its navigation. No man has a deeper sense of it than I have; but it has no bearing on the question. The navigation of the Rhine is of immense importance to the people of Germany and of France. There are treaties, by which the right to this navigation, both ascending and descending, is stipulated for all mankind.* The people of the United States enjoy it as much as the people of France or of Germany. Is it of any value to *us?* Is it of any injury to *them?* I shall not take for an answer Mr Russell's perpetual mis-statements of the question; his perpetual confounding of the article first proposed by Mr. Gallatin, which was never proposed to the British, with the amendment to the 8th article, which was proposed to them and rejected; his perpetual confounding of both with the 3d article of the treaty of 1794. Mr. Russell says he has good reason to believe, that not another member of the mission agreed with me in this opinion. The best possible proof that Mr. Russell himself entertained it, is found in the straits to which he is reduced to muster arguments against it. His ingenuity cannot devise a plausible objection to the proposal as it was made: so he substitutes in its stead, at one time the article first proposed by Mr. Gallatin, and never offered; at another, the third article of the treaty of 1794; at a third, his conjectural inferences of abuses which might be made of the privilege, as if the United States would have had no power to control them. His argument is never against the proposal *as it was made.* It is always against the substitute of his own imagination. Mark his words:

"It would be absurd to suppose that any thing impossible was "intended, and that Great Britain was to be allowed to navigate

* "The navigation of the *Rhine*, from the point where it becomes navigable "unto the sea, and vice versa, shall be free, so that it can be interdicted to *no* "*one:* and at the future Congress, attention shall be paid to the establishment "of the principles, according to which the duties to be raised by the states bor- "dering on the Rhine, may be regulated, in the mode the most impartial, and "the most favourable to the *commerce of all nations.*" [*Definitive Treaty between France and Great Britain, of* 30 *May,* 1814.]

The same stipulation is contained in the Vienna Congress Treaties, and extended to the Necker, the Mayne, the Moselle, the Meuse, and the Scheldt.

" the Mississippi precisely as she could have navigated it imme-
" diately after the treaty of 1783; as if her territories extended
" to it, and as if Spain was in entire possession of one of its banks,
" and of a considerable portion of the other. The revival of the
" British right to navigate the Mississippi, would be, under exist-
" ing circumstances, a new and complete grant to her, measured by
" these circumstances, and thence embracing not only the entire
" freedom of the whole extent of the river, but the *unrestrained*
" *access to it across our territories.* If we did not intend this, we
" intended nothing which Great Britain could accept."

Now observe the amendment to the 8th article of the projected treaty, as it was proposed on the 1st of December, 1814, and rejected:

" The inhabitants of the United States shall *continue* to enjoy the
" liberty to take, dry, and cure fish, in places within the exclusive
" jurisdiction of Great Britain, as secured by the former treaty of
" peace; and the navigation of the river Mississippi, within the
" exclusive jurisdiction of the United States, shall remain free and
" open to the subjects of Great Britain, *in the manner secured by the*
" *said treaty;* and it is further agreed that the subjects of his Bri-
" tannic majesty shall at all times have access, *from such place as*
" *may be selected for that purpose*, in his Britannic majesty's afore-
" said territories, west, and within 300 miles of the Lake of the
" Woods, in the aforesaid territories of the United States, to the
" river Mississippi, in order to enjoy the benefit of the navigation
" of that river, with their goods, effects, and merchandise, whose
" importation into the said States shall not be entirely prohibited,
" on the payment of the same duties as would be payable on the
" importation of the same into the Atlantic ports of the said States,
" and on conforming with the usual custom-house regulations."

After reading this, if you inquire how it was *possible* for Mr. Russell to say, in the passage of his letter immediately preceding it, that we offered the navigation of the Mississippi to the British *otherwise* than as it had been secured to them by the treaty of 1783, and that we offered them *unrestrained* access to it across our territories; the only possible answer to the question will be, that it was necessary for his argument to say so; for the very proposition which he says was *nothing which Great Britain could accept*, was the identical proposition which we did make, and which she did not accept. We did offer, in express terms, and in no others, the navigation, *in the manner secured by the treaty of* 1783. We offered the access to it, restrained to a single point of departure, 300 miles west of the Lake of the Woods; restrained to the admission only of goods not prohibited, to the payment of duties on merchandise admitted, and to compliance with all the custom-house regulations. Mr. Russell says that it embraced the entire freedom of the whole extent of the river. And so it did at the peace of 1783: for it was then secured to Great Britain, not only by the treaty with the United

States, but by her treaties with Spain ; secured indeed in a manner far more unrestrained than in our proposal ; for by the treaties with Spain, she was entitled to the passage both in and out of the mouth of the river, and that none of her vessels should be stopped, visited, or subjected to the payment of any duty whatsoever. The right, therefore, which she would have held under the proposal of 1st December, 1814, would have been, so far as our original territory extended, precisely the same as by her treaty with us of 1783 ; and so far as related to the territory which had belonged to Spain, in 1783, infinitely more restricted than it had been under her treaties with Spain. Yet under all the advantages of the right as secured to her by her treaties with Spain, it never had been of any use to her ; for the simple reason that *she had no settlement* on the river. Now, her boundary, as with us, remained, at the negotiation of Ghent, precisely the same as it had been agreed upon at the peace of 1783. She had formed no settlement on the river ; but she was entitled by that treaty to a line from the Lake of the Woods *to* it. We proposed to her a new line, which would cut her off from it ; which she offered to accept, with the reservation of the right to navigate the river. All the change, therefore, between the right which Great Britain had enjoyed under the treaties of 1783, and that which she would have enjoyed under our proposal of 1814, was to the disadvantage of Great Britain, and went to the annulment of the value to her, even contingent and eventual, of the right.

The worthlessness to the British of this right of navigating the Mississippi, had been very distinctly perceived, and clearly pointed out in the debates, in the British Parliament, on the preliminary articles of peace of November, 1782. On that occasion, the Earl of Carlisle said, in the House of Lords :

" But we keep the navigation of the Mississippi ! and so we might " say that we keep that of the Rhone or the Rhine. We are not " possessed, for 3000 miles, of a single acre of its shores : and " West Florida, where the Mississippi meets the sea, is by the " treaty in the hands of the Spaniards. To what sort of under- " standings is this fallacy addressed, or for what description of ra- " tional beings is this delusion calculated ?"

Lord Walsingham :—" Nothing could be so absurd as to stipulate " for the navigation of the Mississippi, and yet cut off all communi- " cation with it. What was meant by the navigation of the Missis- " sippi, as agreed on in the treaty, he professed he could not tell."

Viscount Stormont—" exposed in glaring colours the folly of " stipulating for the navigation of the Mississippi, when every thing " that could make the Mississippi valuable, was gone. We had no " coast ; there was no junction even with the Lakes ; no commu- " nication by which we could transport our furs to any market. In " short, the article for the navigation of the Mississippi was an in- " sult on our understandings, added to all the injuries done to our " property by the present peace."

Viscount Sackville :—" All the forts were on the American side ; " the immense district of country which supplied us with masts was " gone ; the Indian nations were abandoned ; and we were insult- " ed with the navigation of the Mississippi, when all its benefits " were taken away."

To all this, the only reply of the minister, the Earl of Shelburne, was :

" The navigation of the Mississippi has been reprobated as an " useless acquisition. Could men seriously assert this ? Was a " navigation of so many hundred miles up a country where there " is a call for our manufactures, an useless thing ? Surely not."

[*Hansard's Parliamentary History, vol.* 23.

In the House of Commons, lord North said :

" There seems to be a peculiar mockery in the article which " grants us an eternal and free navigation of the Mississippi, from " its source to the ocean, in participation with the United States. " Such is the freedom of the navigation, that where we were not " locally excluded, we have effected it by treaty We were ex- " cluded by the northern boundary. The east is possessed by the " Americans. The west had been ceded by the peace of Paris to " the French, who had since granted it to the Spaniards ; and each " shore, at its mouth, is ceded by the present treaty to Spain.— " Where is then this navigation, so free and open, to be commenced ? " All the possession, I believe, that we shall ever have, will be its " nomination in this treaty. We must be content with the grant, " without the possession." p. 451.

Mr. Fox :—" By the boundaries which have been so carelessly " prescribed, we have excluded ourselves from the Mississippi ; " so that we only retain the name, without being able to enjoy its " possession." p. 535.

To these objections, no reply was made in the House of Commons. They were all grounded on the very obvious principle that the mere right of navigating a river from its source to the ocean, can be of no use to a nation, having no settlement on the river ; yet, at that time, as Great Britain retained a boundary line *to* the river, she might have subsequently formed a settlement upon it which would have given value to the right. At the time of the treaty of Ghent, thirty years of experience had proved the correctness of those views by which the right of navigating the Mississippi, reserved to the British by the treaties of 1783, had been represented as merely nominal and worthless ; and by the proposed 8th article of the treaty, Great Britain was to abandon her claim even of *ever* coming in territorial contact with the river.

Until a better answer, therefore, than this can be given to the opinion that the proposal offered to the British would have been, if accepted, of no value to them, and of no injury to us, I shall take the liberty to consider it as demonstrated. Nor will it be sufficient

for Mr. Russell to say, that he still differs in opinion with me, and will probably continue to differ in opinion with me, on this point: for I have proved from his own words that his opinion did *not* differ from mine, as to the proposal actually made; and if he does differ with me now, it is only in as much as he differs with himself.

As to the value, the comparative value of the fisheries to us, with this admission of a mere naked right in foreigners to travel on one of our high-ways, constitutionally declared to be forever free to all the citizens of every State in the Union, I cannot again withhold my surprize that it should be denied, by a citizen of Massachusetts. If a citizen of Georgia should publish a laborious argument to prove that the right of cultivating cotton, or a citizen of Louisiana should maintain that the right of raising sugar, was of no value to the people of the United States, is it to the derision or to the indignation of his country, that his dissertation would prove the most effectual passport? And if such an argument should be written, not as an idle amusement to show with how much ingenuity the wildest absurdities might be maintained, but as a grave state-paper, addressed to the supreme authority of the Union, striking directly, not at the mere theoretical right, but at the actual exercise of it by the citizens of Georgia or of Louisiana, and directly tending, in concurrence with a foreign power contesting it, to deprive them of it forever—what would the people of Georgia and Louisiana, what would the people of the United States, say to such a citizen?—Should it further appear, that this very citizen, at the very time of his composing the work, was a member of a commission specially charged and instructed to defend and maintain, against the most formidable of national enemies, the same right, which he was thus exercising every faculty of his mind irredeemably to destroy; that after subscribing his name to a principle containing the last and only defence of this right, while the contest was yet pending, and he himself was yet charged with its support, he should contradict his own signature, exhaust his ingenuity to prove the principle totally destitute of foundation, and style it the dream of a visionary, to ridicule one of his colleagues for believing it; such a rare combination of incidents would doubtless present a moral and political character to the contemplation of the States most immediately interested in his conduct, and to the Union, which would not soon be obliterated from their memory.

That which a native citizen of Georgia or of Louisiana would have done, under the circumstances here supposed, if the right of cultivating cotton or sugar had been at stake, Mr. Russell, a native of Massachusetts, has done, in the hour of danger to her fishery. The Newfoundland, Nova Scotia, Gulf of St. Lawrence, and Labrador fisheries, are in nature, and in the consideration both of their value and of the right to share in them, *one* fishery. To be cut off from the enjoyment of that right, would be to the people of Massachusetts, a calamity similar in kind, and comparable in degree, with an interdict to the people of Georgia or Louisiana to

cultivate cotton or sugar. To be cut off even from that portion of it which was within the exclusive British jurisdiction in the strictest sense, within the Gulf of St. Lawrence, and on the coast of Labrador, would have been like an interdict upon the people of Georgia or Louisiana to cultivate with cotton or sugar three-fourths of the lands of those respective States. The fisheries of Massachusetts are her cotton plants and her sugar canes. She is not blest with the genial skies, nor gifted with the prolific soil, of southern climes; but that which nature has denied to her shores, she has bestowed upon her neighbouring seas, and to them she is indebted for copious sources of nourishment and subsistence, if not of opulence and splendour, to thousands of her sons.

Of the *value* of these fisheries, none but general information was possessed by the American negotiators at Ghent. Their instructions were, not to inquire into their value, but *not to surrender* any part of them. After the peace was made, while Mr. Russell was intent upon his discovery that they were worthless by reason of incessant fogs and humidities of atmosphere, and straining his dialectic powers and his diplomatic erudition, to prove that the right to them was irretrievably lost, I was impelled by my sense of duty to seek more particular information of the *value* both of that fishery, generally, and of that portion of it, which, by the most restricted construction of the notification which we had received, would be denied us if that notification should be carried into effect. I obtained it from various sources; but principally from one of the most distinguished merchants and statesmen of this Union: and as it concerns an object of great national interest, I shall publish it, with some additional observations of my own. It will have the effect of sunshine upon all Mr. Russell's fogs.

Immensely valuable as it will prove these fisheries to be, yet if the question involved in the article first proposed by Mr. Gallatin had been such, that while securing to the people of New England the continued enjoyment of them, it would in any the slightest degree have impaired the enjoyment, by the people of the Western Country, of *their* right to navigate the Mississippi, the objection to it would have been serious and great. Could it have affected *materially* their enjoyment of that right, the objection would have been insuperable, and Mr. Gallatin never would have thought of making the proposal. But no such consequence *could* flow from it. The people of the West are left by it in the full enjoyment of all *their* rights. Nothing was taken from them. But British subjects from Canada would have been entitled to travel by land or water *to* the river, and to descend in boats to its mouth. They now enjoy the right as much as they would have enjoyed it if the article had been proposed and accepted. The only difference is, that they now enjoy it, as not prohibited by law, while by the proposed article it would have been secured to them by treaty.

The objection to Mr. Gallatin's proposed article, therefore, was an objection to securing to New England the continued enjoyment

of the fisheries, because the price of its purchase would be to permit British subjects to travel a highway in the Western Country. It was impossible to make of it any thing more ; and deeply concerned as I felt for the fate of the fisheries, I greatly regretted that the objection was made to it. Not that I expected it would be accepted by the British plenipotentiaries. I too well knew the value which *they* set upon the fisheries, and the worthlessness at which they *must* estimate the naked right *to them* of navigating the Mississippi, to consider it as probable that they would accept the proposal. But our duty as ministers of the Union, charged with the defence of all its rights and liberties staked upon the conflict, and specially instructed *not to surrender* the fisheries, was to use *every* fair exertion to preserve them. And Mr. Gallatin's proposal was one of the only two possible modes of effecting it.

Nevertheless, as a strong and earnest opposition to proposing the article was made, avowedly founded upon a supposed interest *merely* sectional ; after a discussion continued through six successive days, at the last of which only I had taken part, and before the vote was taken, I did, on the 4th of November, declare myself prepared either to propose Mr. Gallatin's article, or to take the ground that all the rights and liberties in the fisheries were *recognised* as a part of our national independence, that they could not be abrogated by the war, and needed no stipulation for their renewal—to assert this principle in the note to be sent to the British plenipotentiaries, with the project of the treaty, and to omit the article altogether.

Mr. Russell, in the acuteness of his perceptions, discovers an inconsistency between these two opinions. In his letter from Paris, he charged it as an inconsistency upon the majority of the mission. In the Boston Statesman he returns to it as an inconsistency of mine. According to his doctrine, the assertion of a right or liberty, is *inconsistent* with the offer of a stipulation for its recognition. The first article of the preliminaries, of November, 1782, was, according to this doctrine, *inconsistent* with the Declaration of Independence. Why stipulate for a right, which you hold by virtue of your own declaration ? I cannot waste words in refuting such positions as these. So of the pretended *inconsistency* of stipulating for the *liberty*, leaving the *right* to the fisheries to rest upon the recognition in the treaty of 1783. The stipulation offered was co-extensive with the portion of right *contested* by the adverse party. There was no motive for asking a stipulation for that which they did not question. If the British plenipotentiaries had not notified to us that *they* considered our *privileges of fishing within the limits of British sovereignty*, as forfeited by the war, I never should have thought of asking a new stipulation to secure them. If their doctrine and Mr. Russell's was right, that the *whole* treaty of 1783 was abrogated by the war, and that our *only* title to the fishing liberties was a *grant* of his Britannic majesty's, in that treaty, which, by the mere existence of war, was *totally extinguished*, they were

under no necessity whatever to give us that notification. They might have concluded the treaty without saying a word about the fisheries, and *then* have told us that they had been forfeited by the war. But they knew better. They knew that not only war, but *conquest*, was necessary to wrest from us any right or *liberty* recognised by them as belonging to us by the treaty of 1783. To accomplish this conquest, despairing to obtain from us an express renunciation by treaty, as they had obtained it from Spain in 1763, they tried to obtain it by means of our *acquiescence* in this notification; and they made it in indefinite terms, seeming to strike only at the portion of the fisheries within their most restricted territorial jurisdiction, but susceptible, if once acquiesced in by us, of a construction sanctioned by the whole history and public law relative to those fisheries, which would deprive us of them all, including those of the Grand Bank.

The article proposed by Mr. Gallatin covered the whole ground *disputed* by the adversary; and the advantage of it to us, if proposed and accepted, would have been, that we should have issued from the war, with all the fishing rights and liberties, as enjoyed before it, *uncontested*. When, therefore, during the discussion, and *before* the vote had been taken, I offered to abandon this advantage, and to rest the future defence of the fishing rights and liberties upon the distinct assertion that they had not been forfeited or abrogated by the war, by thus resting it, I knew that it would be necessary to defend them, after the conclusion of the peace—to defend them against the power, and the policy, and the intellect of Great Britain. It was placing them all at the hazard of future negotiation and another war: and I thought I offered a signal concession, of deference to the mere sectional feelings of one western member of the mission, by offering to accept the alternative. But I felt the most entire confidence in the soundness of the principle which I asserted. I knew that it was sufficient to preserve the fishing rights and liberties from *surrender*. I was content with it as a fulfilment of our express instructions; and I relied upon the determined spirit and active energy of my country to maintain it after the peace. I had no doubt of the ultimate result, so long as *our assent* to the British doctrine and notification was neither expressed nor implied.

My proposal was not however accepted, until, upon taking the vote on the question whether the article proposed by Mr. Gallatin should be offered to the British plenipotentiaries, it appeared there was a majority of the mission in favour of it. This vote was taken as has been stated, on the 5th of November; and on the 7th the substitute, being the proposition which I had suggested on the 4th, was offered by Mr. Clay, and unanimously accepted. The article was not proposed to the British plenipotentiaries, nor was the consideration of it ever after resumed.

This transaction, therefore, was totally distinct from that of the 28th and 29th of November; and as it terminated in no act of the

mission, was not even mentioned, nor was the remotest allusion to it made in the joint letter of the mission to the Secretary of State, of 25th December. It is true, that on the 5th of November, when the vote upon Mr. Gallatin's offered article was taken, the instructions of 19th October preceding, cancelling the paragraph of the instructions of 15th April, 1813, cited by Mr. Russell in his duplicate, although written and on their passage, had not been received ; but it is equally true, that through the whole discussion preceding the vote of 5th November, although every objection which an ardent, profound, and vigorous mind could suggest against the article was adduced, yet no mention was made of this paragraph of the instructions of 15th April, 1813. It never was alleged that the article would violate those instructions ; and if it had been alleged the answer would have been obvious, that so long as Great Britain retained a claim to the boundary *line to* the Mississippi, we could not assume for granted that that river was within our exclusive jurisdiction, nor consequently that the instructions of 15th April, 1813, forbad us from agreeing to a stipulation reserving the right of British subjects to its navigation. Mr. Russell says, that in my remarks I admit, at least by implication, that the letter and spirit of the instruction of 15th April, 1813, were against the offer. I admit no such thing; but think I have proved the contrary. I say that never, either in the discussions preceding the vote of 5th November, 1814, or in those of 28th and 29th November, were the instructions of 15th April, 1813, alleged against the offer : nor did I show to Mr. Russell at the Department of State, the record of the instructions of 4th and 19th October, to show that we were released from the obligation of observing the instructions of 15th April, 1813. I showed them to him to prove, that in the variations of his duplicate, fabricated at Washington in 1822, from his real letter written at Paris in 1815, he had not only introduced a new charge of aggravated crimination against his colleagues, contradicted by the express words of his real letter, but that he had cited, in proof of this charge, an instruction, which at the time when the question was taken, against which he now, speaking as if in 1815, averred, in contradiction to what he had really said in 1815, that he had voted, because he thought it violated that instruction, he knew had been cancelled. I showed them to him to prove, that what he now alleged as his main motive for voting against the proposition, had not been and could not have been his real motive : that it was an invention of 1822, held forth as a narrrtive of facts in 1814.

I trust I have now shown, beyond the reach of reply, that the same character belongs to what he calls the *real* history of the offer made to the British plenipotentiaries on the 1st of December, 1814, in contradiction to the summary statement of it which I had given in my remarks on his letters.

But at the close of Mr. Russell's publication in the Boston Statesman of 27th June, there is an insinuation, upon which I have a word to say, and with which I shall take leave of this part of his

reply. He says he shall have abundant reason to rejoice, if in directing the infirmities of my temper against him, *they shall have been diverted from a course in which they might have been disastrous to the country.* If in the history of my life, or in that of the country, Mr. Russell could allege a single incident, in which the infirmities of my temper ever have taken a course disastrous to the country, I should have felt this Parthian shaft to be as deeply tinged with venom to me, as with bitterness from the heart whence it sped. But it has fallen short of its mark; equally harmless to me and useless to the professed patriotic self-devotion of the archer.

And how stands the account of Mr. Russell? At the negotiation of Ghent, he had, as a member of the mission, been instructed, in terms the most positive and unqualified, not to surrender the fisheries. In that instruction, no sophistical distinction between a *right* in the fisheries held by virtue of our Independence, and a *liberty* in the fisheries held by *grant* from Great Britain, was warranted or allowed. No part of them was to be surrendered. And the instruction was pointed and precise, to break off the negotiation sooner than surrender them. The British plenipotentiaries had presented the demand of surrender in such form, that there were only two possible modes of saving them; one, to agree to a new stipulation recognising them; the other, to maintain that they had not been abrogated by the war. A stipulation for a new recognition is offered. Mr. Russell votes against it, because, as he alleges, it would deprive the western country of an advantage, which they would otherwise derive from the war. He prefers that the East should *lose*, so that the West may *gain*, by the result of the war. He rejects the proposal which would place both interests on the *same* footing as before the war. The East is his native section of the Union. But it is a *disaffected* part of the country: and then—

"Westward the star of empire takes its course."

Well—the other alternative is presented; to maintain that the liberties in question *were not abrogated by the war.* Mr. Russell subscribes to this: but he now says it was "in the spirit of compromise, as a PRETEXT to preserve the fishing privilege, and to get rid of" the other proposition. Subsequently, Mr. Russell assents to the other proposition itself, and subscribes his name to a letter declaring that he had *no objection to it.* But this too he now says was only in deference to the majority, and for fear that if he did not subscribe, the enemy would accept it. The enemy, however, despise this equivalent, so extravagant in the eyes of Mr. Russell; and no sooner is it offered to them than they reject it. The peace is concluded. The Mississippi navigation is *not* conceded to the British; and the preservation of the fishing liberties to this nation, depends exclusively upon their maintaining the principle, that *they had not been abrogated by the war.* Six weeks after signing this treaty, Mr. Russell, still commissioned as a member of the mission to negotiate a treaty of commerce with Great Britain, lia-

ble every hour to be called to a share in that negotiation, and to the *duty* of maintaining against British negotiators our fishing liberties, deliberately sits down and writes to his government a long and learned diplomatic discourse to prove, that the fishing liberties were irretrievably lost; that there was not a shadow of right to them remaining; that the principle upon which he and his colleagues had staked them at Ghent, was the dream of a visionary; that our *only* title to them was a *grant*, in the treaty of 1783; that the treaty of 1783 was a dead letter, and that the only possible expedient for us to recover them, was by offering for them an equivalent, "fair in its comparative value, and just in its relative effects;" and, as the profoundest of all his discoveries, reveals to them that this equivalent must be taken "wherever it might be found."

This letter, Mr. Russell writes, not in cypher; commits it to the ocean, before hostilities have ceased; and exposes it in various ways to be intercepted by the enemy. It reaches, however, its destination, after the ratification of the peace, and just about the time when British cruisers, stationed on the fishing grounds, warn all American fishing vessels not to approach within SIXTY *miles* of the shores. Such is the practical exposition given by the British government of *their* meaning in the indefinite notification that they intended to exclude us from fishing *within the limits of British sovereignty:* and that exposition was supported by all the historical public law applicable to the case, and by the most eminent writers upon the law of nations. The complaints of the American fishermen, thus interrupted in their honest industry, and interdicted from the exercise of it, and the argument of Mr. Russell to *demonstrate* the abrogation of the treaty of 1783 by war, and the consequent discontinuance of the fishing *privilege*, (as he terms it) must have been received about the same time, by the Secretary of State. If the argument had been as successful, as it had been laboriously wrought, what a happy answer it would have supplied for Mr. Monroe to the complaints of the fishermen! What a theme for the instructions to be given to the American minister at London, upon this emergency!

But the President of the United States and the Secretary of State of that day, were no converts to the doctrine of Mr. Russell; nor believers in the worthlessness of the fishing liberties. The minister at London was instructed to remonstrate against the interruption of the fishermen, and to maintain the rights of the nation. A correspondence with the British government ensued, in which the question as to the abrogation of the treaty of 1783 was thoroughly discussed. The orders to the British cruisers were partly disavowed, and partly countermanded. The negotiation was continued until that of the convention of 1818 commenced, and merged in it. The British government never formally renounced their and Mr. Russell's doctrine, that the war of 1812 had abrogated the treaty of 1783. As little did the government of the United States

renounce the doctrine, that all their rights and liberties, recognised by the treaty of 1783, were in full force as if the war of 1812 had never occurred. The conflict of opinion was adjusted by a new article, as little liable to be abrogated by a future war, as the treaty of Independence. By this article, we have expressly renounced a small portion of the liberties within the exclusive and limited territorial jurisdiction of part of the British provinces, and have received in equivalent an enlargement of those liberties on the coast and shores of Newfoundland. The substance of the contest has been conceded to us; and each party has adhered to its doctrine. Now, if Mr. Russell had been charged with this negotiation on the part of the United States, as, at the time when he wrote his letter of 11th February, 1815, there was a probability that he might be, what would have been his situation, and how would this great interest of his country have stood, if when first ordered to remonstrate against the interruption of the American fishermen by British cruisers in 1815, the British government had answered him by a copy of his own letter, written but six months before at Paris? To his own situation, perhaps, his memory may furnish him a parallel, from the feelings with which on the 29th of April last, he learnt that the *original* of his letter had been found. But for *the interest of his country*, what had his letter left him the power to say to the British government, in the case supposed? For the maintenance of the *liberties* of his country, he had disabled his own pen, and sealed his own lips. He had come forth as the champion of the cause of their adversary. The fisheries on the banks of Newfoundland, in the Gulf of St. Lawrence, and on the coast of Labrador, would have been lost to this Union; lost, by the prevarications (to use no harsher term) of a NATIVE OF MASSACHUSETTS. Is this, the man who charges me with infirmities of temper, which *might have taken a course disastrous to my country?*

II. Right of the People of the United States to the Fishing Liberties—Effect of War upon Treaties, and Treaty Stipulations—Peculiar character of the Treaty of 1783.

When at the negotiations of Ghent, under an express instruction from the government of the United States, sooner to break off the negotiation than to *surrender* the fisheries; after a notification from the British plenipotentiaries that their government "did not intend "to grant to the United States, *gratuitously*, the *privileges* formerly "granted to them by treaty, of *fishing* within the limits of the Bri- "tish sovereignty, and of using the shores of the British territories, "for purposes connected with the fisheries"—I suggested to my colleagues, as an answer to be given to that notification, that *all* the *rights* and *liberties*, in the fisheries, having been *recognised* by

Great Britain in the treaty of 1783, as belonging to the people of the United States, *none* of them had been forfeited or abrogated by the war; that we needed no new stipulation for their security, and that we should consider ourselves as much entitled to them after the peace, without an article concerning them as with one; and when my colleagues unanimously, so far as their signatures could pledge their sentiments, united with me in asserting that principle; it certainly did not enter into my dreams, that seven years afterwards one of those same colleagues would traduce that doctrine before the legislative assembly of my country, as equivalent to a crime of state, and denounce me in the face of the nation, as a visionary dreamer for believing it.

I first suggested it as an alternative, for an article proposed by another member of the mission, to be offered for a new stipulation, recognising again those liberties, for an equivalent recognition, of a similar liberty claimed by the other party, and deducible from the same principle—I had no objection to that article, because it offered nothing but what I considered as necessarily flowing from the principle itself, and because, if accepted, it would not only have secured the interest, and the liberties in question, but have precluded all future controversy with the adverse party concerning them. But as one member of the mission had raised very earnest objections against the article, and as I was anxiously desirous of conciliating the feelings as well as of protecting the interests of every part of the Union, I was willing to accept the assertion of the principle, as a substitute for the stipulation of the article, and to rest the defence of the interest upon the future firmness and intelligence of my country.

In the soundness of the principle itself I firmly believed and still believe:—I had proposed the assertion of it *before* the vote upon the question whether Mr. Gallatin's projected article should be offered to the British plenipotentiaries had been taken.—It was not then accepted, but after the vote had been taken, and a majority of the mission had resolved to propose the article, my principle was reproduced by Mr. Clay, and by unanimous consent was substituted for the article which it had been determined to offer.

The paragraph as it appears in the note of 10th November, 1814, from the American to the British plenipotentiaries, signed by *all* the members of the American mission, is as follows:

"In answer to the declaration made by the British plenipoten-
"tiaries respecting the fisheries, the undersigned, referring to what
"passed in the conference of the 9th of August, can only state
"that they are not authorized to bring into discussion any of the
"*rights or liberties* which the United States have heretofore en-
"joyed in relation thereto. From their nature, and from the pe-
"culiar character of the treaty of 1783, by which they were re-
"cognised, no further stipulation has been deemed necessary by

"the government of the United States, to entitle them to the full "enjoyment of all of them."

As the treaty of Ghent was concluded without any article relating to the fisheries, the only grounds upon which our rights and liberties in them could be maintained against Great Britain after the peace, were contained in the principle asserted by this paragraph. They rested, therefore, upon the *nature* of the rights and liberties of the people of this Union, in and to those fisheries, and upon the peculiar character of the treaty *recognising* them. What was the nature of those rights and liberties? And what was the peculiar character of that treaty?

The nature of the rights and liberties, consisted in the free participation in a *fishery*. That fishery covering the bottom of the banks which surround the island of Newfoundland, the coasts of New-England, Nova Scotia, the Gulf of St. Lawrence, and Labrador, furnishes the richest treasure and the most beneficent tribute that ocean pays to earth on this terraqueous globe—By the pleasure of the Creator of earth and seas, it had been constituted in its physical nature *one* fishery, extending in the open seas around that island, to little less than five degrees of latitude from the coast, spreading along the whole northern coast of this continent, and insinuating itself into all the bays, creeks, and harbours to the very borders of the shores. For the full enjoyment of an equal share in this fishery, it was necessary to have a nearly general access to every part of it. The habits of the game which it pursues being so far migratory that they were found at different periods most abundant in different places, sometimes populating the banks and at others swarming close upon the shores. The latter portion of the fishery had, however, always been considered as the most valuable, inasmuch as it afforded the means of drying and curing the fish immediately after they were caught, which could not be effected upon the banks.

By the law of nature this fishery belonged to the inhabitants of the regions in the neighbourhood of which it was situated. By the conventional law of Europe, it belonged to the European nations which had formed settlements in those regions. France, as the first principal settler in them, had long claimed the *exclusive* right to it. Great Britain, moved in no small degree by the value of the fishery itself, had made the conquest of all those regions upon France, and had limited by treaty, within a narrow compass, the right of France to any share in the fishery. Spain, upon some claim of prior discovery had for some time enjoyed a share of the fishery on the banks; but at the last treaty of peace, prior to the American revolution, had expressly renounced it.

At the commencement of the American revolution, therefore, this fishery belonged exclusively to the *British nation*, subject to a certain limited participation in it reserved by treaty stipulations to France.

By an act of parliament, passed in the reign of Edward the sixth, (1547) the Newfoundland fishery had been declared an unlicensed fishery, free to all the inhabitants of the realm, and in all the charters of the New-England colonies, the rights of *fishings*, had been granted, with special reservations of the right of sharing in these fisheries to *all British subjects.* The right "to use and exercise "the trade of fishing upon the coasts of New-England, in any of "the seas thereunto adjoining, or any arms, of the said seas, or "salt water rivers, where they have been wont to fish," together with the power to use the shores, for purposes connected with the fisheries, was expressly granted much at large, in the last charter of Massachusetts Bay, as it had been in those that preceded it. There was a gross mistake, therefore, in the assertion that the king of Great Britain might have interdicted the enjoyment of these fisheries to the people of the province of Massachusetts Bay. It was their birth-right, as British subjects; it was their special right as secured to them by charter; and the British parliament itself could deprive them of it, as they did, only by one of those acts which provoked and justified the Declaration of Independence.

In March 1775, the British parliament, passed "an act to restrain "the trade and commerce of the provinces of Massachusetts Bay "and New-Hampshire, and colonies of Connecticut and Rhode-"Island, and Providence Plantation, in North America, to Great "Britain, Ireland, and the British islands in the West Indies; and "to prohibit such provinces and colonies from carrying on any "fishery on the Banks of Newfoundland, and other places therein "mentioned, under certain conditions and limitations."

In moving for leave to bring in this bill, lord North "supported "his motion by declaring, that as the Americans had refused to "trade with this kingdom, it was but just that we should not suffer "them to trade with any other nation. In particular, he said that "the fishery on the Banks of Newfoundland, and the other banks, "and all the others in America, was the undoubted right of Great "Britain, *therefore we might dispose of them as we pleased.* That "although the two houses had not declared *all* Massachusetts Bay "in rebellion, they had declared, that there is a rebellion in that "province. *It was just, therefore, to deprive that province of its "fisheries.*" *Hansard's Parliamentary History, vol.* 18, *p.* 299.

In the debates upon this bill, all the abilities and all the eloquence of both parties in the British parliament were called forth. On this bill Mr. Charles Fox said, "that this bill must have been "calculated to put an end to all that remained of the legislative "authority of Great Britain over America. That it must be in-"tended to show to the colonies that there was no one branch of "supreme authority which parliament might not abuse in such a "manner, as to render it reasonable to deny, and necessary to re-"sist it." Then after enumerating all their previous acts of oppression, he added, "but the British legislature is now to convince the "Americans that this power thus used, may be made by far the

"most oppressive, and worse than any of those they had hitherto "denied. He was quite satisfied, that the bill was meant for no- "thing else but to exasperate the colonies into open and direct "rebellion."

Mr. Burke, pursuing the same idea, and enlarging upon it, applied to the ministry, who brought forward the bill, the passage from Macbeth:

"I am in blood
"Stept in so far, that should I wade no more,
"Returning were as tedious as go o'er."

He said "that the scheme was new, and unheard of in any civil- "ized nation; to preserve your authority by destroying your domi- "nions. It was rather the idea of hostility between independent "states, where one not being able to conquer another, thinks to re- "duce its strength gradually, by destroying its trade and cutting off "its resources."

On the passage of the bill through the house of lords, there was a protest against it, signed by sixteen peers, among whom are the names of Rockingham, Camden, and Fitzwilliam. Among the reasons of this protest are the following:

"Because the people of New England, besides the natural claim "of mankind to the gifts of Providence on their own coast, are "specially entitled to the fishery by their charters, which have "never been declared forfeited"—

"Because we conceive that the attempt which has been made to "bribe the nation into an acquiescence in this arbitrary act, by "holding out to them (by evidence at the bar,) the spoils of the "New England fishery, worth upwards of three hundred thousand "pounds sterling a year, to be a scheme full of weakness and in- "decency; of indecency, because it may be suspected that the de- "sire of the confiscation has created the guilt; weak, because it "supposes that whatever is taken from the colonies is of course to "be transferred to ourselves. We may trample on the rules of "justice, but we cannot alter the nature of things. We cannot "convey to Great Britain the advantages of situation which New "England possesses for the fishery."

But reason and eloquence were vain: the bill, styled by Mr. Burke "the grand penal bill, which passed sentence on the trade "and sustenance of America," was sanctioned by the then usual majorities of both houses of parliament; and it is thus specially mentioned among the charges against George the third, in the Declaration of Independence: "He has combined with others to sub- "ject us to a jurisdiction foreign to our constitution, and unacknow- "ledged by our laws; giving his assent to their acts of *pretended* "legislation——*for cutting off our trade with all parts of the* "*world.*"

Had Mr. Russell been a member of the Congress of 1776, with what admiration would that illustrious body have listened to his doc-

trine that the British sovereign had an absolute unlimited control over the commerce and fisheries of the colonies, and that he needed nothing more than his maxim of *nullum tempus occurrit regi*, to cut them off from them, *whenever and however he might think proper.*

Had Mr. Russell been prime minister of Great Britain in 1775, with how much easier and speedier a process than by an act of parliament, would he have cut off the commerce and the fisheries of the colonies. His doctrine of the royal prerogative, and his maxim of *nullum tempus occurrit regi*, would have sufficed, with a mere order in council to accomplish the work.

This act of parliament continued in force during the whole war of the American Revolution; and as the Declaration of Independence was subsequent to and partly founded upon its enactment, when the parties came to negotiate the treaty of peace, or rather the preliminary articles of November, 1782, to which the whole argument applies, their situations and relative interests, claims, and principles, were certainly very peculiar. The whole *fishery*, (with the exception of the reserved and limited right of France,) was the *exclusive property* of the British empire. The right to a full participation in that property, belonged by the law of nature to the people of New England, from their locality. Their national right to it as British subjects, had, as the United States maintained, been tyrannically violated, but not extinguished; and, as the other party to the negotiation asserted, forfeited by their rebellion, and lawfully taken from them by act of Parliament, the supreme superintending authority of the whole empire. It was one of the questions upon which the war itself had hinged, and in the interval between the Declaration of Independence, and the negotiation for peace, it had been among the subjects of the deepest and most anxious deliberations of Congress, how this great interest should be adjusted at the peace. In the second volume of the Secret Journals of the Confederation Congress, recently published, it will be found, that from the 17th of February to the 14th of August, 1779, the various questions connected with this interest, formed the subject of the most earnest and continual debates, and the numerous propositions upon which the yeas and nays were taken, manifestly show the determination with which they resolved, in no event whatever, to abandon the *right* to share in this fishery; and the perplexities under which they laboured in deciding, as well whether it should or should not be made a sine qua non for peace, as how they should secure the *continuance* of that portion of the fishery which, with the boundary line which they ultimately concluded to accept, would fall within the immediate territorial jurisdiction of the provinces to remain in British possession.

By the third article of the preliminaries of Novemher, 1782, and also by the corresponding article of the definitive treaty of 1783, the whole of the fishing rights and liberties were secured, and *recognised*, as rights and liberties, pre-existing, and not as temporary grants—the variation of the terms in the article, securing the *right*

to fish on the banks of Newfoundland, in the Gulf of St. Lawrence, and at all other places in the sea, and the *liberty* to fish on the coasts of Newfoundland and the other British provinces, arose only from the circumstance, that by the same act which recognised these liberties, (the treaty of peace,) the territorial jurisdiction of those provinces, which had until then been the same with that of the other British colonies, became to the United States a *foreign* jurisdiction. The continuance of the fishing liberty was the great object of the article; and the language of the article was accommodated to the severance of the jurisdictions, which was consummated by the same instrument. It was co-instantaneous with the severance of the jurisdiction itself; and was no more a grant from Great Britain, than the *right* acknowledged in the other part of the article; or than the Independence of the United States, acknowledged in the first article. It was a continuance of possessions enjoyed before; and at the same moment, and by the same act, under which the United States acknowledged those coasts and shores as being under a *foreign* jurisdiction, Great Britain recognised the liberty of the people of the United States to use them for purposes connected with the fisheries.

This also was the *peculiar* character of the treaty of 1783, in which our title was recognised to the rights and liberties in the fisheries. They had all the qualities mentioned by the authors on the laws of nations, as appropriate to permanent and irrevocable acknowledgments:

"Who can doubt," says Vattel, "that the pearl fishery of Bahrem and Ceylon, may not lawfully be enjoyed as property? And "though a fishery for food appears more inexhaustible, if a nation "has a fishery on its coasts that is particularly advantageous, and "of which it may become master, shall it not be permitted to appropriate this natural advantage to itself, as a dependence on the "country it possesses; and if there are a sufficient number of fish "to furnish the neighbouring nations, of reserving to itself the great "advantage it may receive from them by commerce? But if, so "far from taking possession of it, *it has once acknowledged* the common right of other nations to come and fish there, *it can no longer* "exclude them from it; it has left that fishery in its primitive freedom, at least with respect to *those who have been in possession of it.* "The English not having taken the advantage *from the beginning*, "of the herring fishery on their coast, it is become common to them "with other nations." *Vattel, b. 1, ch. 23, § 287.*

In the third article of the treaty of 1783, the liberties of the people of the United States in the fisheries within the British North American colonial jurisdiction were, in the most rigorous sense of the words, acknowledged *from the beginning*—for it was by the very same act, which constituted it, as to the United States, a *foreign* jurisdiction.

That this was the understanding of the article, by the British government as well as by the American negotiators, is apparent to demonstration, by the debates in Parliament upon the preliminary articles. It was made in both Houses one of the great objections to the treaty. In the House of Commons, lord North, the man who as minister in 1775, had brought in and carried through the act for depriving us of the fishery, but who had now become a leader of the opposition, said: "By the third article, we have, in our spirit of "reciprocity, given the Americans an unlimited right to take fish "of every kind on the Great Bank, and on all the other Banks of "Newfoundland. But this was not sufficient. We have also given "them the right of fishing in the Gulf of St. Lawrence, and at all "other places in the sea, where they have heretofore enjoyed, "*through us*, the privilege of fishing, They have likewise the "power of even partaking of the fishery which we still retain. "We have not been content with resigning what we possessed, but "even share what we have left. The United States have liberty "to fish on that part of the coast of Newfoundland which British "fishermen shall use. All the reserve is, that they are not to dry "or cure the same on the island, By this grant they are at liberty "to take our property, for which we have so long kept possession "of the island. This is certainly a striking instance of that liberal "equity which we find is the basis of the provisional treaty! But "where shall I find an instance of that reciprocity which is also set "forth in the preamble? We have given the Americans the unli- "mited privilege of fishing on all the coasts, bays, and creeks, of "our American dominions. But where have they, under this "principle of reciprocity, given us the privilege of fishing on any "of their coasts, bays, or creeks? I could wish such an article "could be found, were it only to give a colour to this boasted reci- "procity. The advantage we should derive from such an article, "cannot be a consideration; for every real and positive advantage "to Great Britain seems to have been entirely foreign to the intent "and meaning of this peace, in every particular; otherwise I "should have thought it would have been the care of administra- "tion not to have given without the least equivalent, that permis- "sion which they could never demand as British subjects. I am "at a loss to consider how we could grant, or they could claim it, "as a right, when they assumed an independency which has sepa- "rated them from our sovereignty."

In this speech, the whole article is considered as an improvident concession of British property; nor is there suggested the slightest distinction in the nature of the grant between the right of fishing on the banks, and the liberty of the fishery on the coasts.

Still more explicit are the words of lord Loughborough, in the House of Peers: "The fishery," says he, "*on the shores retained* "*by Britain*, is in the next article, not ceded but *recognised* as a "right inherent in the Americans, which though no longer British "subjects, they are *to continue to enjoy unmolested*, no right on the

"other hand being reserved to British subjects to approach their "shores, for the purpose of fishing, in this reciprocal treaty."

In the replies of the ministerial members to these objections, there is not a word attempting to contradict them, or hinting at a distinction in the tenure of the title between the right and the liberty.

Such was the nature of the rights and liberties of the people of the United States in the fisheries, and such the peculiar character of the treaty of 1783, by which they had been recognised. The principle asserted by the American plenipotentiaries at Ghent; disavowed and combated by Mr. Russell, in his letter of 11th February, 1815, and now treated by him as the dream of a visionary, was, that these rights and liberties, thus recognised, could not be forfeited by a war, and that no new stipulation was necessary to secure them. The whole fishery, as well without as within the special territorial jurisdiction, had been the common property of the British empire: so had been the whole territory to which it had been incidental. By the treaty of separation, the territory was divided, and two separate sovereign jurisdictions arose. The fishery bordered upon both. The jurisdictions were marked out by the boundary line agreed upon by the second article of the treaty. The fishery was disposed of in the third article. As common property, it was still to be held in common. As a possession, it was to be held by the people of the United States, as it had been held before. It was not like the lands partitioned out by the same treaty, a corporeal possession, but in the technical language of the English law, an *incorporeal hereditament*, and in that of the civil law, a *right of mere faculty*, consisting in the power and liberty of exercising a trade, the places in which it is exercised being occupied only for the purposes of the trade. Now the right or liberty to enjoy this possession, or to exercise this trade, could no more be affected or impaired by a declaration of war, than the right to the territory of the nation. The interruption to the exercise of it during the war, could no more affect the right or liberty, than the occupation by the enemy of territory could affect the right to that. The right to territory could be lost only by abandonment or renunciation in the treaty of peace; by agreement to a new boundary line, or by acquiescence in the occupation of the territory by the enemy. The fishery liberties could be lost, only by express renunciation of them in the treaty, or by acquiescence in the principle that they were forfeited, which would have been a tacit renunciation.

I hope it will not be deemed an assertion of infallibility, when I say, that I present this argument to my country, both as to the nature of our rights and liberties in the fisheries, and as to the peculiar character of the treaty by which they were recognised, with a perfect conviction that *it cannot be answered*. But if I am mistaken in that, sure I am, that it never has been answered, either by the British government or by Mr. Russell.

If admitted, it leaves the question, whether the treaty of 1783 was or was not abrogated by the late war? a mere question of useless speculation, or of *national pride*. That *British* statesmen and jurists should manifest some impatience, and seize upon any pretext to cause *that* treaty to disappear from the archives of their national muniments, is not at all surprising. That an *American* statesman should partake of the same anxiety, is not so natural, though it may be traced to the same system of public law, by which the commerce and fisheries of the colonies, before the Revolution, were supposed to be held at the mere pleasure of the British crown. It is not necessary to deny that the treaty of 1783 was, as a national compact, abrogated by the late war, so long as with the assertion of its being so abrogated, is not coupled the assertion that any one right or liberty, acknowledged in it as belonging to the people of the United States, was abrogated with it. But when the British government or Mr. Russell assert that all the other rights and liberties acknowledged and secured to the United States by that treaty, survived its abrogation, except one portion of the property in the fisheries, stipulated in one half of one article, I say there is nothing either in the nature of the liberty contested, or in the article by which it is recognised, that will warrant their distinction; that the whole treaty was one compact of irrevocable acknowledgments, consummated by the ratification; and that the third article in particular, adjusted the rights and liberties of the parties in and to one common property, of which neither party could ever afterwards divest the other without his consent.

When, therefore, the British government and Mr. Russell assert, that war abrogates all treaties, and every article of every treaty, they have yet proved nothing for their argument; they must proceed to affirm, that with the abrogation of the treaty by war, all the rights and liberties *recognised* in the treaty as belonging to either party, are likewise abrogated. And herein lies the fallacy of their argument. We ask them, was the *acknowledgment* of the Independence of the United States, in the first article of the treaty of 1783, abrogated by the war of 1812? Yes, says Mr. Russell, but the Independence of the United States rested upon their own declaration, and not upon the acknowledgment of Great Britain. With regard to all other nations, undoubtedly our Independence rests upon our own Declaration, for they never contested it. But Great Britain had waged a war of seven years against it, and it was by virtue of that article of the treaty alone, that *she* was bound to acknowledge our Independence. And this constituted one of the peculiarities of the treaty of 1783. Our treaty with France, of 1778, contained no article stipulating the acknowledgment of our Independence. No such article was necessary with any nation which never had contested it. But with Great Britain, it was the whole object of that treaty. All the other articles were merely arrangements of detail and adjustments of consequences flowing from the recognition of the first article. If the acknowledgment of our Independence,

in the first article of the treaty of 1783, was abrogated by the war of 1812, from the first hour of its declaration by Congress, Great Britain might have treated us as *rebels*, as she had done through the whole war of the Revolution.

Was the boundary line of the treaty of 1783 abrogated by the war of 1812? The American plenipotentiaries certainly did not so consider it, when they spoke of it in one of their notes, as the line "as it now is." Nor did the British plenipotentiaries so consider it, when they demanded the express stipulation of *another* line, by the treaty then to be concluded. They claimed it, not because the boundary of the treaty of 1783 was abrogated, but by the right of conquest, as a cession of our territory; and the demand was resisted on that ground. The articles in the treaty of Ghent, which refer to the boundary line, do not *renew* or *confirm* the articles of the treaty of 1783, which they recite. They refer to them, as reference is always made to treaties in full force, and merely add new stipulations for ascertaining the line described by them, according to the true intent and meaning of that treaty.

If, then, none of the rights, liberties, or possessions, recognised by the first and second articles of the treaty of 1783, as belonging to the United States, were abrogated by the war of 1812, by what right, and upon what principle, could Mr. Russell consider the fishing liberty, *recognised* as belonging to them by the *third* article, to be *entirely at an end, without a new stipulation for its revival.* The whole of the third article, concerning the fisheries, was as much a *recognition* of pre-existing rights, liberties, and possessions, as the first and second articles. With regard to that identical portion of the article, which Mr. Russell considers entirely at an end, the words of lord Loughborough, which I have cited, prove that it was universally considered, at the time when the treaty of 1783 was made, as a recognition of existing rights, as much as all the rest. Mr. Russell says that the fishing liberty, within exclusive British jurisdiction, was not necessary to perfect the jurisdiction of the United States. What then? It was not a perfection of jurisdictions, but a division of common property. The whole fishery had been the joint property of both parties. When the separation was to be consummated, it was agreed that *that* property should still be held in common; that the people of the United States should continue to enjoy the *right* of exercising the faculty upon the banks and open seas, and should have the *liberty* of exercising it in the *unsettled* bays, creeks, and harbours, where they had before exercised it as British subjects, but which were thenceforth to be within a foreign jurisdiction. There is nothing in the import of the term *liberty*, nothing in the limitations expressed in the article, nothing in the principles of English law, or of the laws of nations applicable to fisheries, which can warrant the pretension that this, more than the rest of the article, or than any other article in the treaty, was a grant of privilege, revocable at the pleasure of Great Britain, or forfeitable by war. Mr. Russell, in his letter, frequent-

ly substitutes the term *privilege*, for that of *liberty*, which is the word used in the article, and the substitution is itself an indication of weakness in his argument. An eminent English writer marks the distinction between the meaning of these words, in the following manner:

"Liberty, in the general sense, is an unalienable *right*, which "belongs to man as a rational and responsible agent: it is not a "*claim*, for it is set above all question and all condition; nor is it "a *privilege*, for it cannot be exclusively granted to one being, nor "unconditionally be taken away from another."

Crabb's English Synonymes—word RIGHT.

Such is the purport of the word liberty, in its general sense; and by the application of it in the third article of the treaty to the power which the Americans were to enjoy within the British jurisdiction, to carry on the fishery, it is not to be presumed that the negotiators of the treaty mistook the word, or that they used it as in any manner synonymous with a privilege.

Were it then true, as Mr. Russell asserts, that war dissolves all treaties, without exception, and that the treaty of 1783 was totally dissolved by the war of 1812, it would not follow that the fishing liberty within British jurisdiction, stipulated by the third article of the treaty, was abrogated with it. As a liberty existing before the war, the right to it could not be forfeited by war. The suspension of its exercise during the war, could no more affect the right, than the occupation of territory by the enemy could affect the right to that.

But the doctrine itself, that war dissolves all treaties, and every article of every treaty, without exception, is not correct. It has been very solemnly disclaimed by the United States, in the following terms of the 24th article of their first treaty with Prussia:

"And it is declared, that neither THE PRETENCE that war dis-"solves all treaties, nor any other, whatever, shall be considered "as annulling or suspending this and the next preceding article; "but on the contrary, that the state of war, is precisely that for "which they are provided; and during which they are to be as "sacredly observed as the most acknowledged articles in the law "of nature or nations."

Of this treaty, Dr. Franklin and Mr. Jefferson were two of the negotiators on the part of the United States, and Frederick the second was the sovereign with whom it was negotiated. It not only contradicts the doctrine that war dissolves all treaties, without exception, but fixes a stigma upon it as a *pretence* usually resorted to for the purpose of disguising or of palliating a violation of good faith.

The *pretence* that war dissolves all treaties, is itself a remnant of that doctrine of the barbarous ages, that faith is not to be kept with enemies, and that no compact made in war is obligatory. The modern writers upon the laws of nations, have exploded this opinion,

and expressly laid it down, that all articles of a treaty made during war, or having in contemplation the state of war, as that in which they are to take effect, remain in full force, and are not abrogated by war. This, therefore, constitutes a large class of articles of treaties which are not abrogated by war. Another class of articles, equally privileged from such abrogation, are all *executed stipulations*—Cessions of territory, demarcations of boundary, acknowledgments of pre-existing rights and liberties, belong to this class—and in it are included the first, second, and third articles of the treaty of 1783.

All articles which have been executed, may indeed be said to be abrogated by the execution itself. The transaction between the parties is consummated. In the case of a cession of territory, when the possession of it has been delivered, the article of the treaty is no longer a compact between the parties, nor can a subsequent war between them operate in any manner upon it.

So of all articles the purport of which is the *acknowledgment* by one party of a pre-existing right belonging to another. The engagement of the acknowledging party is consummated by the ratification of the treaty. It is no longer an executory contract; but a perfect right united with a vested possession, is thenceforth in one party, and the acknowledgment of the other is in its own nature irrevocable. As a bargain, the article is extinct; but the right of the party in whose favour it was made, is complete, and cannot be affected by a subsequent war.

A *grant* of a facultative right, or incorporeal hereditament, and specifically of a right of fishery, from one sovereign to another, is an article of the same description. It is analogous to a cession of territory, and is in fact a partial and qualified cession. The *right* is consummated by the ratification of the treaty. The possession is vested by the exercise of the faculty. Mere war between the parties, can neither impair the right of one party nor effect the revocation of the grant by the other.

So that whether the third article of the treaty of 1783 be considered as an acknowledgment of pre-existing *liberties*, or as a *grant* of them, to be exercised within British jurisdiction, it was in its nature permanent and irrevocable, liable, under no circumstances whatever, to be annulled by the will of Great Britain, and capable of being lost to the United States in no other manner than by their own express renunciation or tacit abandonment.

I have already cited a passage from Vattel, to show, that when a nation has once *acknowledged* the right of other nations to share in a *fishery* within its territorial jurisdiction, it can never afterwards exclude them from it without their consent. What says he of grants by treaty?

"Treaties, which do not relate to objects of reiterated occur-
"rence, but to transitory, single acts, immediately consummated,
"conventions, compacts, which are accomplished once for all, and
"not by successive acts, as soon as they have received their exe-

" cution, are things consummated and finished. If they are valid, " they have in their nature *an effect perpetual and irrevocable.*— " In like manner, as soon as a right is transferred by a lawful con- " vention, it no longer belongs to the state which has ceded it : the " affair is finished and concluded." *Vattel, b. 2, ch. 12, § 192.*

" But we must not here confound treaties or alliances, which, " bearing the obligation of reciprocal engagements, can subsist only " by the continued existence of the contracting powers, with those " contracts which give *an acquired and consummate right* independ- " ent of all mutual engagement. If, for example, a nation had " ceded in perpetuity to a neighbouring prince, *the right of fishery* " *in a river*, or that of keeping a garrison in a fortress, this prince, " would not lose his rights, even if the nation from which he re- " ceived them, should afterwards be conquered or pass in any other " manner under a foreign dominion His rights depend not on the " continued existence of that nation : they had been *alienated* " by it, and the conqueror could take only that which belonged to " itself." *Felice—Commentary on Burlamaqui, Part 4, ch. 9, § 161.*

I trust I have now sufficiently shown, either that the treaty of 1783 was of that class of treaties which are not abrogated by a subsequent war, between the parties to it, or that if it was so abrogated, not one particle of the *rights* or *liberties*, stipulated or recognised in it, as belonging to the United States, was or could be abrogated with it, and consequently—that the conclusion of Mr. Russell's elaborate argument, that the fishing liberty secured to the United States, by the third article, was *entirely at an end, without a new stipulation for its revival*, was as unwarranted by any principle of the laws of nations, as it was pernicious to the *liberties* of his country. Equally groundless and untenable, is the opinion that by offering the stipulation in another treaty, the peculiarity of its character would be lost. The peculiarity consisted as well in the nature of the liberty, as in the character of the treaty by which it was secured, as was expressly asserted by the American plenipotentiaries ; and the same principles would have applied to a new stipulation then, and do apply to the new stipulation since made, as did apply to the third article of the treaty of 1783. When Mr. Russell says that I appeal to a class of treaties which are not known to exist, he only proves that it would be well for him to revise his studies of diplomatic and international law.

The doctrine that all treaties and all rights, acknowledged by articles of treaties, are dissolved by war, has not always been held to be sound even by the British government. In the debates in parliament on the peace of Amiens, lord Auckland said—

" He had looked into the works of all the first publicists on these " subjects, and had corrected himself in a mistake, still prevalent " in the minds of many, who state, in an unqualified sense, that all " treaties between nations are annulled by war, and must be spe- " cially renewed if meant to be in force on the return of peace. It

"is true, that treaties in the nature of compacts or concessions, "the enjoyment of which has been interrupted by the war, and "has not been renewed at the pacification, are rendered null by "the war. But compacts not interrupted by the course and effect "of hostilities, such as *the regulated exercise of a fishery on the re-* "*spective coasts of the belligerent powers*, the stipulated right of cut- "ting wood in a particular district, *or possessing rights of territory* "*heretofore ceded by treaty, are certainly not destroyed or injured by* "*war.*"

And again: "It is not true that our non-renewal of the Dutch "treaties will liberate the ships and vessels of that republic from "the ancient practice of striking their flag to British ships of war, "in the British seas. That practice did not depend on the treaty "of 1784, nor even on the treaty of Breda, in 1667. *Those trea-* "*ties were only recognitions of an existing right.* And the treaty of "1667 expressly stated that the Dutch flag shall be struck in such "manner as the same hath been formerly observed in any time "whatsoever. The same remark would be found applicable to the "sixth article of the treaty of 1784, by which the States General "promised not to obstruct the navigation of the British subjects in "the eastern seas. That article was no compact or grant; it was "only an acknowledgment of a pre-existing and undoubted right; "and was merely meant as a notice to our merchants that they "would not be disturbed in the exercise of that right."

Lastly: "He had already stated the incontrovertible principle, "that treaties or compacts, the exercise of which is not interrupt- "ed by the course of the war, remain in full effect on the return "of peace. Our privileges in the Bay of Honduras had been given "in lieu of ancient and acknowledged rights in the Bay of Cam- "peachy. Those privileges having been enjoyed without disturb- "ance during the war, are confirmed and established."

The earl of Carnarvon—a member of the opposition, said in the same debate:

"It has been *nearly* admitted by ministers, that former treaties, "by the omission of renewal, are abrogated: my noble relation "(lord Grenville) does not go that length, but he thinks we have "lost our title deeds in most cases, and has affirmed, that we have "thereby totally lost the gum trade. I am far from thinking any "of these consequences follow simply from the tacit omission of "the renewals. War does not abrogate any right, or interfere "with the right, though it does with the exercise, but such as it "professes to litigate by war. All the writers on the law of nations "distinctly affirm, that peace has only relation to the war which it "terminates, leaving all the former relative situations of the two "countries as before the war; and that former treaties, though not "expressly renewed, remain in full effect, if not expressly abro- "gated in the treaty of peace, or by private consent and acknow- "ledgment."

"The lord chancellor (Eldon) said that if by the omission of the "mention of former treaties they were all to be considered as ab- "rogated, and if the public law of Europe was thus altered, he "had no difficulty in saying that an address should be voted to his "majesty praying that he would dismiss his present ministers from "his councils forever. But he trusted that the fact was far other- "wise, and that the conduct of ministers deserved no such cen- "sure."

And afterwards with regard to the right of cutting logwood in the Bay of Honduras:

"Let it be held in mind, that Honduras became the rightful pro- "perty of Great Britain by conquest, and was never ceded to "Spain, without *an acknowledgment*, on the part of the court of "Madrid, of our undoubted right to cut logwood. In proportion "as the right of conquest was paramount to the effect of treaties, "in which that right was not specifically abandoned and resigned, "our right to cut logwood in the Bay of Honduras remained more "secure and free from challenge than it could have done if it had "been mentioned in the definitive treaty."

And in the debate in the House of Commons, speaking of this same right of cutting logwood in the Bay of Honduras, lord Hawkesbury (the present earl of Liverpool) said,

"The fact is, that right was ceded to us by the Spaniards in "1787, in return for some lands that we gave them on the Mus- "quito Shore; therefore it is a settlement which we possess of "right, and to which the Spaniards were as much bound to refer "in the treaty as we were; it was, in truth, on our part no omis- "sion." *Hansard's Parliamentary History, vol. 36, A. D. 1802.*

The doctrine of the non-abrogation even of *commercial* treaties, by war, has been maintained by British statesmen and lawyers on many occasions. They have sometimes carried it further than those of other nations have been ready to admit. Thus in the debate of the House of Commons on the *definitive* treaty of peace of 1783, between France, Spain, and Great Britain, Mr. Fox, alluding to the renewal in that treaty of the treaty of Utrecht; and to the period of two years from the 1st of January, 1784, fixed for the negotiation of a treaty of commerce, said: "Pending the nego- "tiation, it was reasonable to suppose the three nations would, in "commercial transactions, be bound by the treaty of Utrecht: and "this he imagined was the sense of the British ministers. But sup- "posing the two years should expire before the new commercial "arrangements should take place, a question would naturally arise, "what would, in this case, become of the treaty of Utrecht? *For* "*his part, he was of opinion that the treaty of Utrecht would, in such* "*a case, still remain in full force;* but he knew, on the other hand, "that this had not been the opinion of the courts of Madrid and "Versailles, the ministers of which contended, that if the negotia- "tions should end without producing any new commercial arrange-

"ments, the treaty of Utrecht would, in that case, be completely "annulled." *Hansard's Parliamentary History, vol. 23, p. 1147.*

In the year 1686, a treaty was concluded between Louis the 14th and James the second, regulating the commercial intercourse between the respective subjects and possessions of France and Great Britain *in America.* It was known by the denomination of the Treaty of Neutrality. Two years after its conclusion, occurred the revolution by which James was expelled from the British throne, and a war between the two nations, which terminated in 1695, by the peace of Ryswick. At the commencement of the next century, broke out the war of the Spanish succession, which, after raging twelve years, closed in 1714, by the treaty of Utrecht. The treaty of neutrality had *not* been specifically renewed or named, either by the treaty of Ryswick or by that of Utrecht: yet on the 3d of June, 1728, the attorney and solicitor general, *Yorke* and *Talbot*, gave their official opinion that the treaty of neutrality was still in force, and instructions, founded upon its validity, were given to the governors of the British colonies in America.

In 1741, commenced the war of the Pragmatic Sanction, or for the Austrian succession, which finished in 1748, by the peace of Aix la Chapelle—five years after which, the attorney and solicitor general, sir Dudley Ryder, and Murray, afterwards lord Mansfield, gave it as their official opinion that the treaty of neutrality of 1686, was then yet in force.

The same question occurred in 1765, after the close of the seven years' war, when the attorney and solicitor general, Norton and De Grey, gave it as their opinion that the treaty of neutrality was *not* then in force; but the advocate general, sir James Marriott, gave it as his opinion that it was, and supported his opinion by an elaborate, ingenious, and forcible argument.

These opinions are all to be found in the second volume of Chalmers's Collection of Opinions of Eminent Lawyers, pp. 339—355; and as the result of the whole, Chitty, in his Treatise on the Laws of Commerce and Manufactures, a work published in 1820, says: "It has been considered that a general commercial treaty, not limited by its terms to a particular time, is only suspended by a war, "and, that upon the return of peace, it will tacitly revive, by "implication, unless there be an express declaration to the contrary." Chitty, p. 45.*

By the concurrent testimony, therefore of the writers upon the laws of nations, and of the most eminent British statesmen and lawyers of the present age, the general position that war abrogates all treaties, and the particular inference from it, that by the abrogation of treaties, the rights or *liberties* stipulated in them are con-

* For the references to these *British* authorities, relative to the effect of *war*, upon treaties, and treaty stipulations, I have to acknowledge my obligations to a learned and ingenious friend, a member of the Senate of the United States.

sequently discontinued, are both utterly destitute of foundation. I have been the more anxiously earnest in the developement of this demonstration, because the error of Mr. Russell, both as to the principle and its consequence, is by no means confined to him. In the above extracts it will appear, that it was entertained by lord Auckland himself, until called upon in the deliberations upon the peace of Amiens, to examine thoroughly the doctrines of the writers on the laws of nations relating to the subject. Be the opinion of Mr. Russell what it may, the portion of the fisheries to which we are entitled, even within the British territorial jurisdiction, is of great importance to this Union. To New-England it is among the most valuable of earthly possessions. But the whole fishery of the Banks, and in the adjoining seas, is at stake, upon the principles of Mr. Russell: by his doctrine we now hold it at the breath of Great Britain; for, by a declaration of war, she can extinguish it forever. The foundations of the Union itself are shaken by this opinion. If the fisheries of New-England are held at the pleasure of Great Britain, one of the main purposes of the Union to the people of New-England is taken away. So long as Great Britain holds a preponderating power upon the ocean, whenever a war between her and the United States may occur, this great interest of New-England will be the first to suffer, and in the most distressing manner. If, besides the endurance of this peculiar hardship which is unavoidable, New-England is to be told that her liberties in the fisheries themselves, are nothing but voluntary donations of Great Britain, which she has a right to resume, on the first firing of a gun, the vital interests of New-England are not on the same footing of protection, by the Union, as those of its other portions. In the relative proportions of power and influence between the different sections of the country, New-England will behold, without envy and without regret, her sisters of the South and of the West, rising to pre-eminence in wealth, population, and resources over herself. But never again let her be told, and least of all by one of her own sons, that her *rights*, her *liberties*, or her *possessions*, are of trifling or insignificant value to the nation, and that at the first sound of a hostile trumpet they will be abandoned to the mercy of the common enemy; or surrendered to the desperate chance of a repurchase for an equivalent *wherever it may be found.*

In my remarks on Mr. Russell's letter, I expressed the hope, that from the whole history of this transaction, the statesmen of this Union would take warning through all future time, in their conflicts with foreign powers never to consider any of the liberties of this nation as abrogated by a war, or capable of being extinguished by any other agency than our own *express* renunciation. Mr. Russell takes alarm at this lest the *implicit* renunciation by the British of the right to navigate the Mississippi should not be sufficient—and he says, that according to me, that right is unimpaired. Mr. Russell's conclusion, as usual, is broader than his premises. He might have seen that the object of my remark was to give warning to the

statesmen of this Union, never to permit or abet the extinguishment of any of our liberties, by *abandonment* or *surrender*, which would be tacit renunciation. It was no purpose of mine to say that our liberties could not be so extinguished. On the contrary, it was precisely because after the notification of the British plenipotentiaries on the 9th of August, 1814, our fishing liberties would have been tacitly renounced, had we quietly acquiesced in it, that I deemed the counter notification in the note of 10th November, or a new stipulation in the treaty *indispensable* to save those liberties from extinction. It was precisely because Mr. Russell had not only been prepared to surrender them, but so eager to prove them already extinct, that I thought it necessary to give this warning to the statesmen of my country, never hereafter to follow his example. It was that counter notification, which saved our liberties (and our rights too) in the fisheries. Had the negotiation with Great Britain since the peace, been for the repurchase of liberties acknowledged by ourselves to be extinct, a very different equivalent must have been given for them, from the naked right of navigating the Mississippi. The liberties of this Union will never be capable of being extinguished otherwise than by *express* renunciation, so long as the public servants to whom the defence and protection of them may be committed, are duly determined never to surrender them by implication. The incapacity of surrender is not in the liberty itself, but in the soul of its defenders.

As to the right of the British to the navigation of the Mississippi, they have not only renounced it, by their concurrence with Mr. Russell that the treaty of 1783 was abrogated by the war, but by stipulating a new boundary line, which cuts them off from all claim to territory upon the river, without reserving the right to its navigation. They have abandoned both the grounds of their claim to it—territorial contiguity and treaty stipulation; and an effectual guard against it, more effectual indeed than any renunciation, is that while they have no territory upon its borders, they never can have any interest in reviving it. Their very advancing any claim to it at Ghent, was an inconsistency with their doctrine that the treaty of 1783 was abrogated by the war, and as they really had no interest worth a straw in the claim, they finally abandoned it, to redeem their consistency. They, like Mr. Russell, were willing enough to adopt one principle for operation upon their own claims and its opposite principle, to affect the claims of their adversary; but as the object of their claim was of no real value, they finally preferred to abandon their claim, rather than formally to renounce their doctrine.

But there is one object which to Mr. Russell, as a member of Congress, seems to present matter for very serious consideration. If the navigation downwards of the Mississippi, by British subjects, with merchandise on which the duties have been paid, and subject to all the custom-house regulations, is a power of such tremendous consequence to the Union, and especially to the *unoffending* inha-

bitants of the Western Country ; if it surrenders them all to British smugglers, British emissaries, and the tomahawk of the Indian savage, why has it never been prohibited by law ? How has the arm of the Union been palsied ? Why has the guardian and protecting power of the national government so long slumbered ? There was nothing proposed to be stipulated by the offer made to the British plenipotentiaries on the first of December, 1814, which British subjects do not at this hour possess, and have never ceased to enjoy, without any stipulation whatsoever. By the act of Congress admitting the State of Louisiana into the Union, it is provided " that it shall be " taken as a condition upon which the said State is incorporated in " the Union, that the river Mississippi, and the navigable rivers and " waters leading into the same, and into the Gulf of Mexico, shall be " *common highways*, and forever free, as well to the inhabitants of " said State as to the inhabitants of other States, and the territories " of the United States, without any tax, duty, impost, or toll, there- " for, imposed by the said State." That which is a common highway, free to all the citizens of the United States, by this act, and by the constitution of the State of Louisiana, is in point of fact equally free to all foreigners at peace with the United States, and consequently to British subjects. It can be prohibited only by law, and no such law is in existence.

It will be observed that the right of navigation offered by Mr. Gallatin's proposal, was only that of *descending* the river, from its source to the ocean. It did not bind us to admit them to a right of ascending the river, from the sea, or to allow their vessels to pass above the first port of entry in the river.

It remains only to be shown, that the estimates of Mr. Russell, with regard to the *value* of the fishing liberties, are as erroneous, as his opinions with regard to our title to them are incorrect.

III. Fishing Liberties—their Value.

Of all the errors in Mr. Russell's letter of 11th February, 1815, to the Secretary of State, there is none more extraordinary in its character, or more pernicious in its tendency, than the disparaging estimate which he holds forth of the *value* of the liberties in the fisheries, secured by the treaty of 1783, and, as he would maintain, extinguished, by the war of 1812. Not satisfied with maintaining in the face of his own signatures at Ghent, the doctrine that all right to them had been irredeemably extinguished by the war; not contented with the devotion of all his learning and all his ingenuity, to take from his country the last and only support of right upon which this great interest had, by himself and his colleagues, been left at the conclusion of the peace to depend; not ashamed of urging the total abandonment of a claim, at that very time in litigation, and of which he was himself one of the official defenders, he has exhausted his powers, active and meditative, in the effort to depreciate the *value* of those possessions, which, while committed to his charge, he was so surprisingly intent upon relinquishing forever.

His first attempt in this patriotic career, is to represent this interest as a merely sectional and very trifling concern, brought in conflict at Ghent with another but a much greater and deeper interest of a different section of the Union.

His next endeavour is to represent it as an exclusive interest of a few individuals, the mere accommodation of a few fishermen, annually decreasing in number.

And, finally, he degrades the value of the object itself, by affirming that the fogs in the high northern latitudes prevented the effectual curing of the fish, and that this liberty was totally unnecessary to us for subsistence or occupation, and afforded in no way, (in the duplicate he says in no *honest* way,) any commercial facility or political advantage.

It is scarcely possible to render a greater disservice to the people of this Union, than in their controversies with foreign powers, to array the interests of one section of the Union against those of another. On no occasion can this be so dangerous as when the power, with whom the negotiation is held, has the purpose of wresting from us the enjoyment of such a possession, the immediate interest of which is confined to one section; and I confidently affirm, that never since the existence of the United States as an independent nation, has there been an emergency upon which there was less reason for flinging into the discussion this torch of dissension, than at the negotiation of Ghent. The aim of the enemy was at the fisheries. His object was to deprive us of *them*. The American plenipotentiaries were instructed not to surrender them. What more could the enemy desire, than to excite within the American mission itself, a sectional interest adverse to that of the fisheries? He did so; and so far as Mr. Russell dared to indulge his disposition, most

successfully. Had Mr. Russell been in the mission of Great Britain instead of that of the United States, he could not have performed a more zealous and acceptable service, than by maintaining the doctrines of his letter of 11th February, 1815. As to the object at issue, it was *their* argument that he urged. As to the spirit he excited, it was *their* interest he was promoting. Excellent indeed would have been the account to which they would have turned their right of navigating the Mississippi, if, at the very moment while they disclaimed it, they could have obtained for its renunciation, that of these United States to their fishing liberties. Besides the immense disproportion of what they would have gained by the exchange, they would have planted in the heart of the Union, a root of bitterness which never could have been plucked up but with its blood. Had the fisheries been surrendered—when the people of New-England came to inquire where were their liberties in them, and how they had been lost? what would their feelings have been to be told—they were lost, that we might gain the right of forbidding British subjects from descending the Mississippi river in boats? With what human endurance would they have heard it said, We have lost nothing, upon the whole. You, indeed, have lost your fisheries—but *we* have acquired the right of interdicting all Englishmen from travelling a highway in the Western Country.—It was not in the power of man to devise an expedient better suited to detach the affections of the people of New-England from the Union, or to fill their bosoms with heart-burning and jealousy against the people of the West.

I have already shown that the importance which Mr. Russell strains to the utmost all his faculties to give to this British right of navigating the Mississippi, is all founded upon a mis-statement of what it was. He begins by saying that it would be absurd to suppose that the article meant no more than what it expressly purported to mean; and then he *infers* that it would have been understood to mean the same thing as the third article of the treaty of 1794; and as the free access, both of intercourse and of trade with the Indians within our territories, which that had given to the British, had caused inconveniences to us, which had been mentioned in the instructions of 15th April, 1813, he *infers* that all the same evils would have flowed from the continuance of their right to navigate the Mississippi. No such inference *could* have been drawn from the article. The article was precisely what it purported to be, and no more; and if, under colour of it, British subjects had ever attempted to give it a greater extension, it would always have been entirely in the power of the American government to control them.

It is the first common-place of false and sophistical reasoning, to mis-state the question in discussion; and Mr. Russell, after making this, without reason or necessity, a question of one sectional interest against another, changes the nature of the question itself, for the double purpose of magnifying the Western, and of diminish-

ing the Eastern interest, which he has brought in conflict with each other.

I have shown that the proposal actually made to the British plenipotentiaries, was, by the admission of Mr. Russell himself, so worthless, that it was nothing that they could accept; as in fact it was not accepted by them. Let us now see what was the value of this fishery; this "doubtful accommodation of a few fishermen, annually decreasing in number."

From the tables in Dr. Seybert's Statistical Annals, it will be seen that in the year 1807, there were upwards of seventy thousand tons of shipping employed in the *cod* fishery alone; and that in that and the four preceding years, the exports from the United States of the proceeds of the fisheries, averaged three millions of dollars a year. There was indeed a great diminution during the years subsequent to 1807, till the close of the war—certainly not voluntary, but occasioned by the state of our maritime relations with Europe, by our own restrictive system, and finally by the war. But no sooner was that terminated, than the fisheries revived, and in the year 1816, the year after Mr. Russell's letter was written, there were again upwards of sixty-eight thousand tons, employed in the cod fishery alone. From Dr. Seybert's statements, it appears further, that in this occupation the average of seamen employed is of about one man to every seven tons of shipping, so that these vessels were navigated by ten thousand, of the hardiest, most skilful, soberest, and best mariners in the world.—"Every person (says Dr. Seybert,) on board our fishing vessels, "has an interest in common with his associates; their reward de-"pends upon their industry and enterprise. Much caution is ob-"served in the selection of the crews of our fishing vessels: it often "happens that every individual is connected by blood, and the "strongest ties of friendship. Our fishermen are remarkable for "their sobriety and good conduct, and they rank with the most "skilful navigators."

Of these ten thousand men, and of their wives and children, the cod fisheries, if I may be allowed the expression, were the daily bread—their property—their subsistence. To how many thousands more were the labours and the dangers of their lives subservient? Their game was not only food and raiment to themselves, but to millions of other human beings.

There is something in the very occupation of fishermen, not only beneficent in itself but noble and exalted in the qualities of which it requires the habitual exercise. In common with the cultivators of the soil, their labours contribute to the subsistence of mankind, and they have the merit of continual exposure to danger, superadded to that of unceasing toil. Industry, frugality, patience, perseverance, fortitude, intrepidity, souls inured to perpetual conflict with the elements, and bodies steeled with unremitting action, ever grappling with danger, and familiar with death: these are the properties to which the fisherman of the ocean is formed by

the daily labours of his life. These are the properties for which he who knew what was in man, the Saviour of mankind, sought his first, and found his most faithful, ardent, and undaunted disciples among the fishermen of his country. In the deadliest rancours of national wars, the examples of latter ages have been frequent of exempting, by the common consent of the most exasperated enemies, fishermen from the operation of hostilities. In our treaties with Prussia, they are expressly included among the classes of men "*whose occupations are for the common subsistence and benefit of mankind;*" with a stipulation, that in the event of war between the parties, they shall be allowed to continue their employment without molestation. Nor is their devotion to their country less conspicuous than their usefulness to their kind. While the huntsman of the ocean, far from his native land, from his family, and his fire-side, pursues at the constant hazard of life, his game upon the bosom of the deep, the desire of his heart, is by the nature of his situation ever intently turned towards his home, his children, and his country. To be lost to them gives their keenest edge to his fears; to return with the fruits of his labours to them is the object of all his hopes. By no men upon earth have these qualities and dispositions been more constantly exemplified than by the fishermen of New-England. From the proceeds of their "perilous and hardy industry," the value of three millions of dollars a year, for five years preceding 1808, was added to the exports of the United States. This was so much of national wealth *created* by the fishery. With what branch of the whole body of our commerce was this interest unconnected? Into what artery or vein of our political body did it not circulate wholesome blood? To what sinew of our national arm did it not impart firmness and energy? We are told they were "*annually decreasing in number*:" Yes! they had lost their occupation by the war; and where were they during the war? They were upon the ocean and upon the lakes, fighting the battles of their country. Turn back to the records of your revolution—ask Samuel Tucker, himself one of the number; a living example of the character common to them all, what were the fishermen of New-England, in the tug of war for Independence? Appeal to the heroes of *all* our naval wars—ask the vanquishers of Algiers and Tripoli—ask the redeemers of your citizens from the chains of servitude, and of your nation from the humiliation of annual tribute to the barbarians of Africa—call on the champions of our last struggles with Britain—ask Hull, and Bainbridge, ask Stewart, Porter, and Macdonough, what proportion of New-England, fishermen were the companions of their victories, and sealed the proudest of our triumphs with their blood; and *then* listen if you can, to be told, that the *unoffending* citizens of the West were *not at all* benefited by the fishing privilege, and that the few fishermen in a remote quarter, were *entirely exempt from the danger*.

But we are told also that "by far the greatest part of the fish taken by our fishermen before the present war, was caught in the

open sea, or upon our own coasts, and cured on our own shores." This assertion is, like the rest, erroneous.

The shore fishery is carried on in vessels of less than twenty tons burthen, the proportion of which, as appears by Seybert's Statistical Annals, is about one seventh of the whole. With regard to the comparative value of the Bank, and Labrador fisheries, I subjoin hereto, information collected from several persons, acquainted with them, as their statements themselves will show in their minutest details.

At an early period of the negotiation, I had been satisfied, that the British plenipotentiaries would not accept the renewal of the 8th article of the treaty of 1783, (the Mississippi navigation) as an equivalent for the renewal of the third, (the fisheries.) In the correspondence which followed their notification at the first conference, that their government did not intend to *grant* the former fishing liberties without an equivalent, they had even dropped their claim for an article renewing their right of navigating the Mississippi, until we met their pretension that the fisheries had been forfeited by the war, which we first did in our note of the 10th of November, 1814. The principle upon which I had always relied, was, that the rights and liberties recognised in the 3d article of the treaty of 1783, had not been abrogated by the war, and would remain in full force after the peace, unless we should renounce them expressly by an article in the treaty, or tacitly by acquiescing in the principle asserted by the British plenipotentiaries. There was a period during the negotiations, when it was probable they might be suspended, until the American commissioners could receive new instructions from their government. After the peace was signed I was aware that the question relating to the fisheries, must become a subject of discussion with the British government; and I had been previously informed by the Secretary of State, that if the negotiation should result in the conclusion of peace, it was the President's intention to nominate me for the subsequent mission to Great Britain. I felt it, therefore, to be peculiarly my duty to seek the best information that I could obtain, in relation both to the rights and liberties in the fisheries, as recognised in the treaty of 1783, and to their value. The following are extracts of two letters written by me from Ghent, to one of the negotiators of the treaty of 1783. By attending to the dates it will be seen, that the first of them was written three days *before* the first proposal by Mr. Gallatin, of the article relating to the Mississippi and the fisheries, and the second, two days after the signature of the peace.

Ghent, 27th October, 1814.

"My dear sir: The situation in which I am placed, often brings to my mind that in which you were situated in the year 1782, and I will not describe the feelings with which the comparison, or I might rather say, the contrast affects me. I am called to support

the same interests, and in many respects the same identical points and questions. The causes in which the present war originated, and for which it was on our part waged, will scarcely form the most insignificant item in the negotiation for peace. It is not impressment and unalienable allegiance, blockades and orders in council, colonial trade and maritime rights, or belligerent and neutral collisions of any kind that form the subjects of our discussion. It is the boundary, the fisheries, and the Indian savages.

"It is nothing extraordinary but a strong evidence of the real character of the contest in which we are engaged, that the most offensive and inadmissible of the British demands are pointed against the State of Massachusetts. It is a part of her territory of which they require the cession, and it is the fisheries of her citizens which they declare themselves determined no longer to allow. It is not the general right to the fisheries which they contest, but the liberty of fishing and of drying fish within their jurisdiction, stipulated in the 3d article of the peace of 1783. For my own part, I consider the whole article as containing parts of the general acknowledgment of our Independence, and therefore, as needing no renewal by any future treaty. But as the subject will certainly come under the consideration of the government of the United States, they will have time to give instructions founded upon their view of it, before any peace can be concluded. There is no doubt, whenever the negotiation is resumed, that this point will become again a subject for discussion. If there is among your papers relating to the negotiations of peace in 1782 and 1783, any information tending to elucidate the third article of those treaties which you can communicate to me, it may perhaps serve a valuable purpose to the public. And as this letter contains more than I should at this moment think myself warranted to communicate even to you, but for the particular motive which occasions it, I must request of you to consider it as entirely confidential.

"Ghent, 26th December, 1814.

"My dear sir: I transmited by Mr. Hughes a duplicate of my last letter to you, dated 27th October, which I still entreat you to answer, *if I am destined to a longer continuance in Europe*, and upon which I ask all the advice and information which it may be in your power to bestow. It relates principally to the subject of the greatest difficulty we have had in the negotiation, and that, which of all others, is left in the state the most unsatisfactory to us and particularly to me. It has been now for a full month ascertained, that unless new pretensions on the part of Great Britain were advanced, a treaty of peace would be signed; but it was not until last Thursday that I ceased to doubt whether it would receive *my* signature. The British plenipotentiaries had declared to us at the outset of the negotiation, that it was not the intention of the British government to grant to the people of the United States in future the liberties of fishing, and drying, and curing fish within the exclusive

British jurisdiction *without an equivalent*. There is, as you must remember, in the third article of the treaty of 1783, a diversity of expression by which the general fisheries on the Banks are acknowledged as our right, but these fishing privileges within the British jurisdiction, are termed liberties. The British government consider the latter as franchises forfeited ipso facto by the war, and declared they would not grant them anew without an equivalent. Aware that by this principle they, too, had forfeited their right to navigate the Mississippi, recognised in the same treaty of 1783, they now demanded a new provision to secure it to them again.

"We were instructed not to suffer our right to the fisheries to be brought into discussion; we had no authority to admit any discrimination between the first and the last parts of the third article of the treaty of 1783. No power to offer or agree to an equivalent either for the rights or the liberties. I considered both as standing on the same footing: both as the continuance of franchises always enjoyed, and the difference in the expressions only as arising from the operation of our change from the condition of British subjects to that of a sovereign people, upon an object in one part of general, and in the other of special, jurisdiction. The special jurisdiction had been that of our own sovereign: by the revolution and the treaty of peace, it became a foreign, but still remained a special, jurisdiction. By the very same instrument in which we thus acknowledged it as a foreign jurisdiction, we reserved to ourselves with the full assent of its sovereign, and without any limitation of time or of events, the franchise which we had always enjoyed while the jurisdiction had been our own.

"It was termed a *liberty* because it was a freedom to be enjoyed within a special jurisdiction; the fisheries on the Banks were termed rights because they were to be enjoyed on the ocean, the common jurisdiction of all nations; but there was nothing in the terms themselves and nothing in the article or in the treaty implying an intention or expectation of either of the contracting parties, that one, more than the other, should be liable to forfeiture by a subsequent war. On the maturest deliberation I still hold this argument to be sound, and it is to my mind the only one by which our claim to the fisheries within British jurisdiction can be maintained. But after the declaration made by the British government, it was not to be expected that they would be converted to this opinion without much discussion, which was forbidden to us, and the result of this must have been very doubtful upon minds at all times inclined, and at this time most peculiarly prone, rather to lean upon power than to listen to reason. We stated the general principle in one of our notes to the British plenipotentiaries, as the ground upon which our government deemed no new stipulation necessary to secure the enjoyment of all our rights and liberties in the fisheries. They did not answer that part of our note; but when they came to ask a stipulation for the right of British subjects

to navigate the Mississippi, we objected, that by our construction of the treaty of 1783, it was unnecessary. If we admitted their construction of that treaty, so as to give them a new right to the navigation, they must give us an equivalent for it. We offered an article recognising the continuance of the rights on both sides; this offer met, however, with very great opposition among ourselves—for there were two of us against making it, and who thought the navigation of the Mississippi incomparably more valuable than the contested part of the fisheries. Not so did the British government think; for they, instead of accepting it, offered us an article stipulating to negotiate hereafter for an equivalent to be given by Great Britain for the right of navigating the Mississippi, and by the United States for the liberties of the fisheries within British jurisdiction. This was merely to obtain from us the formal admission that both the rights were abrogated by the war. To that admission I was determined not to subscribe. The article was withdrawn last Thursday by the British plenipotentiaries, who accepted our proposal to say nothing in the treaty about either, and to omit the article by which they had agreed that our boundary west from the Lake of the Woods should be the 49th parallel of north latitude. They at the same time referred again to their original declaration, that the fisheries within British jurisdiction would not hereafter be granted without an equivalent. It is evident that it must be the subject of a future negotiation. The only thing possible to be done now, was to preserve our whole claim unimpaired, and with that I consented to sign the treaty. ———

"As a citizen of Massachusetts, I felt it to be most peculiarly my duty not to abandon any one of her rights, and I would have refused to sign the treaty had any one of them been abandoned: but it was impossible to force a stipulation in favour of the fisheries; and for a temporary possession of Moose Island, merely until it shall be ascertained whether it belongs to her or not, we could not think of continuing the war. ———

"My colleagues propose to leave Europe about the first of April, in the Neptune, which is waiting for them at Brest. I have great satisfaction in saying, that our harmony has been as great and constant, as perhaps ever existed between five persons employed together upon so important a trust. Upon almost all the important questions, we have been unanimous. ——— J. Q. A."

The information requested in these letters was collected, and transmitted to me, and received at London in the summer of 1815. The material parts of it are contained in the following papers, the first of which is from a letter of James Lloyd, Esq. to my correspondent, and is now published with Mr. Lloyd's permission. It was written in consequence of the communication to him of the above letter from me, and, as will be seen by its date, within four weeks after that of Mr. Russell's letter to Mr. Monroe from Paris.

"Boston, 8th March, 1815.

"Sir: In a former note, returning the letter with which you had so obligingly favoured me, I had the honour to offer you my congratulations on the termination of the war, without waiting to know what were the grounds of the treaty which concluded it; because, from the tenor of the previous correspondence, and my personal knowledge of nearly all the commissioners, I felt a reliance that the arrangement would not be a dishonourable, although I acknowledge my rejoicing was mingled with fear least it should be, at least in some points, a disadvantageous, one; and this expression of feeling I volunteered with the more readiness, as the intelligence was received at a moment when the national character had been splendidly illustrated by the recent achievement at New-Orleans.

"But I greeted the occurrence with smiles, principally not because I expected it would bring or restore to us all the benefits we possessed under former treaties, but because I saw no chance, but from this source, of happier prospects for the future. It was not, however, the storm that howled along the lakes, or upon the seaboard, that created the apprehension of an instant for the fate of the contest, but it was the hidden fire that was rumbling within our own bosoms, and which, under the continuance of the war, would, I believe, have made our country the theatre of domestic convulsions, as well as of foreign warfare, and perhaps from its effects have offered up some parts of it as no very difficult prey to the mercy of the enemy.

"On this head, I know, sir, you had better hopes, and thought differently from me; and I have now only to say, I am glad the experiment has never come to issue.

"As the price of the purchase of an escape from evils portentous as these, I considered it as probable that the English government might claim from us the contested eastern islands, and interdict all trade between us and her colonial possessions; and possibly still further, that she would endeavour to extort from us the coast fisheries around her own shores; for, on the magnanimity or friendship of Great Britain, or of any other nation, in matters of interest, I confess I never had the ability to lash my imagination into any sort of dependence; but I did also cherish the belief that none of our essential or important rights or *liberties* would be diminished or surrendered. Of the latter, the one of the greatest consequence in reference to its intrinsic value, and as derived from discovery and possession, and confirmed by a formal treaty stipulation, is unquestionably that to which you have referred—the coast fisheries on the shores of the British possessions in North America.

"These fisheries, as most advantageously secured to the United States by the treaty of 1783, and made at the time, as I have always understood, a sine qua non of that treaty, offer an invaluable fund of wealth and power to our country; one which has never been duly attended to, nor justly appreciated, but which, if continued

and improved, was destined to grow with our growth and strengthen with our strength.

" The prosecution of these coast and bay fisheries, although it had already become extremely advantageous, had undoubtedly reached, in a very small degree, the extension and importance it was capable of attaining. The unsettled state of the commercial world for the past twenty years, and the more alluring objects of mercantile enterprise which such a state of things evolved, seemed, in point of immediate consideration and attention, to throw these fisheries into the back ground ; but still, until first checked by the system of embargoes and restrictions, and finally stopped by a declaration of war, they were silently, but rapidly, progressing, and reaching an importance which, though generally unknown to our country and its statesmen, had become highly alarming to the governments and more wealthy merchants of the provinces, and was beginning to attract the attention and jealousy of the cabinet of Great Britain towards them.

" The shores, the creeks, the inlets of the Bay of Fundy, the Bay of Chaleurs, and the Gulf of St. Lawrence, the Straits of Bellisle, and the Coast of Labrador, appear to have been designed by the God of Nature as the great ovarium of fish ;—the inexhaustible repository of this species of food, not only for the supply of the American, but of the European continent. At the proper season, to catch them in endless abundance, little more of effort is needed than to bait the hook and pull the line, and occasionally even this is not necessary. In clear weather, near the shores, myriads are visible and the strand is at times almost literally paved with them.

" All this was gradually making itself known to the enterprise and vigilance of the New-England fishermen, and for a few seasons prior to the year 1808, the resort to this employment had become an object of attention, from the Thames, at New-London, to the Schoodic ; and boats and vessels of a small as well as a larger size, were flocking to it from all the intermediate parts of the United States. In the fishing season, at the best places for catching the cod, the New-England fishermen, I am told, on a Sunday, swarmed like flies upon the shores, and that in some of these years, it probably would not make an over estimate to rate the number of vessels employed in this fishery, belonging to the United States, at from 1500 to 2000 sail, reckoning a vessel for each trip or voyage, and including the larger boat fishery ; and the number, if the fisheries were continued, would shortly be still further and very greatly extended.

" The nursery for seamen, the consequent increase of power, the mine of wealth, the accumulation of capital, (for it has been justly observed, that he who draws a cod fish from the sea, gives a piece of silver to his country,) the effect upon the trade and custom of Great Britain, and the corresponding advantages to the United States, of which the enlargement of such an intercourse was susceptible, (for the stock of fish appears inexhaustible,) you

are much better able to conceive than I am to describe ; but I will pleasure point them anew for your consideration, as on many accounts presenting one of the most interesting public objects to which it can be directed.

Lucrative, however, and imposing in its individual and national bearings, as this fishery was and was to become, it was little known to the leading men of our country, and little spoken of by others, even in Massachusetts, or among those who were actually engaged in it, and a knowledge of its existence in any thing like its real extent, or future capability, was perhaps confined to not more than half a dozen heads, (if so many,) in the whole of the Southern and Western, and even Middle divisions of the Union.

" The causes of its value and importance not being a matter of great notoriety here, are obvious ; it was an employment not only in the fishery, but in many instances undoubtedly in *trade*, with the British inhabitants ; those who were engaged in it made no unnecessary promulgations of their employment, while the poorer inhabitants of the provinces, tasting equally its sweets and advantages, were alike disposed to keep silence with regard to it ; but not so situated were the provincial governments, and the more wealthy of the merchants of the sea-port towns. They had become highly alarmed at the expansion of this fishery and trade; jealous of its progress and clamorous at its endurance; they, therefore, of late years, have repeatedly memorialized the government in England, respecting the fisheries carried on by the Americans, while the whole body of Scottish adventurers, whose trade both in imports and exports, and control over the inhabitants it curtailed, have turned out in full cry and joined the chorus of the colonial governments in a crusade against the encroachments of the infidels, the disbelievers in the divine authority of kings, or the rights of the provinces, and have pursued their objects so assiduously that at their own expense, as I am informed from a respectable source, in the year 1807 or 8, they stationed a watchman in some favourable position near the Straits of Canso, to count the number of American vessels which passed those straits on this employment ; who returned nine hundred and thirty-eight as the number actually ascertained by *him* to have passed, and doubtless many others, during the night or in stormy or thick weather, escaped his observation ; and some of these addressers have distinctly looked forward with gratification to a state of war, as a desirable occurrence, which would, by its existence, annul existing treaty stipulations, so injurious, as they contend, to their interests and those of the nation. With what degree of correctness this expectation has been entertained, the future must determine ; but unfortunately these murmurs and complaints reached England, and were industriously circulated about the time that our restrictive measures awakened an unusual and critical attention to the commercial connection between the two countries, and probably the value and importance of this branch of it is now at least as fully understood and appreciated on the eastern as on the western side of the Atlantic.

" Carried away by first impressions, a large part of mankind become not unfrequently the dupes of misconception, and adhere to their opinions with a pertinacity proportioned to the time they have entertained them. From a source something like this, it has been, and is generally, I might almost say, universally, believed, by the mass of our countrymen, that the right of fishing on the Banks of Newfoundland, or as it is properly called, the Grand Bank, was the great boon acquired, as it respected the fisheries, by the treaty of 1783, while unquestionably the fisheries on the Banks of Newfoundland no more belonged exclusively in possession or the right of control either to Great Britain or the United States, than the air of Heaven is the patent property of both or either of them, with power to dole out its use to such other nations as agree to conform to the stipulations they may please to prescribe for its enjoyment. If any thing was gained or secured on this head, it undoubtedly was the *Coast Fisheries*, on the shores of the British provinces. This is the fishery which will now come under discussion, at least, if not into contest, between the two countries. It is highly important that correct ideas of its value and extent should be entertained, and perhaps these could not be more perspicuously traced than by taking a relative view of it, compared with the importance of the *Bank Fishery*. This I will now briefly attempt; confident, that if in doing it I should be reiterating to you the communication of facts of a knowledge of which you are already acquainted, the motive will bring along with it its own sufficient apology.

"The *Bank Fishery* is carried on in vessels generally from 70 to 90 tons burthen, and manned with eight or ten men each. They commence their voyages early in *March*, and continue in this employment until the last of October, in which time they make *two*, and sometimes three, fares to the United States, bringing their fish home to be cured. The produce of these trips, if successful, after paying the shoresmen the expense of making or curing, generally furnishes a sufficient quantity of dried fish to load the vessel for Europe. These vessels employed in fishing require cables of from 160 to 180 fathoms in length. They must always keep their sails bent to the yards, so as to be ready, in case of accident to the cable, or any of those adverse occurrences to which tempests or the casualties incident to anchoring nearly in mid-ocean, must expose them. They purchase salted clams for bait, which they procure at considerable expense, and take with them from the United States. They fish night and day, when the fish bite well, which is not always the case, and haul their cod in a depth of water from 45 to 55 fathoms. After catching, they head and open the fish, and place them in the hold, in an uncured, and consequently, in some degree, in a partially perishing state; and after having obtained a fare, or freight, return with it to the United States, to be cured or dried and prepared for exportation; but before this is done, or they can be landed, the fish is always more or less deteriorated, becomes softer, and part of it makes an inferior quality of fish, called Jamai-

fish, and the proportion of this Jamaica fish is much greater than it would have been had the fish been dried and cured shortly after having been taken, as is the case with the Coast and Bay Fishery; in addition to which, these vessels employed in the Bank Fishery are unavoidably obliged to prosecute this business with a great comparative expense, as to the wear and tear of their vessels, and loss of time, and with an increased degree of hazard, both as to safety and success.

"The *Coast* and *Labrador Fisheries* are prosecuted in vessels of from 40 to 120 tons burthen, carrying a number of men, according to their respective sizes, in about the same proportion as the vessels on the Bank Fishery. They commence their voyages in May, and get on the fishing ground about the 1st of June, before which time bait cannot be obtained. This bait is furnished by a small species of fish called *capling*, which strike in shore at that time, and are followed by immense shoals of cod fish, which feed upon them. Each vessel selects its own fishing ground, along the coasts of the Bay of Chaleurs, the Gulf of St. Lawrence, the Straits of Bellisle, the Coast of Labrador, even as far as Cumberland Island, and the entrance of Hudson's Bay, thus improving a fishing ground reaching in extent from the 45th to the 68th degree of north latitude.

"In choosing their situation, the fishermen generally seek some sheltered and safe harbour, or cove, where they anchor in about *six* or *seven fathoms* water, unbend their sails, stow them below, and literally making themselves at home, dismantle and convert their vessels into habitations at least as durable as those of the ancient Scythians. They then cast a net over the stern of the vessel, in which a sufficient number of capling are soon caught to supply them with bait from day to day. Each vessel is furnished with four or five light boats, according to their size and number of men, each boat requiring two men. They leave the vessel early in the morning, and seek the best or sufficiently good spot for fishing, which is frequently found within a few rods of their vessels, and very rarely more than one or two miles distant from them, where they haul the fish as fast as they can pull their lines, and sometimes it is said that the fish have been so abundant, as to be gaft or scooped into the boats, without even a hook or line; and the fishermen also say that the cod fish have been known to pursue the capling in such quantities, and with such voracity, as to run in large numbers quite out of water on to the shores. The boats return to the vessels about nine o'clock in the morning, at breakfast, put their fish on board, salt and split them; and after having fished several days, by which time the salt has been sufficiently struck in the fish first caught, they carry them on shore and spread and dry them on the rocks or temporary flakes. This routine is followed every day, with the addition of attending to such as have been spread, and carrying on board and stowing away those that have become sufficiently cured, until the vessel is filled with dried fish, fit for an immediate market, which is generally the case by the *middle* or *last of August*, and

with which she then proceeds immediately to Europe, or returns to the United States ; and this fish, thus caught and cured, is esteemed the best that is brought to market, and for several years previous to that of 1808, was computed to furnish *three fourth parts* of all the dried fish exported from the United States. This fishery was also about that time taking a new form, which would have had a double advantage, both in point of profit and extension ; for some of our merchants were beginning to send their large vessels to the Labrador Coast, and its vicinity, to receive *there*, from small fishing boats they employed or purchased from, cured fish, to load their vessels with immediately for Europe, thus saving so great an expense in getting the fish to market abroad, as would in a short time have given our merchants a command of the European markets, and would have also afforded an encouragement to a small but very numerous boat fishery, which, from receiving the pay for their labour on the spot, could not fail to have been greatly excited and increased, and enabling the persons concerned in the exportation from the coast, to receive at home the proceeds of their adventures from abroad, about as early as the *bank fish* could have been put into a state fit to be exported from the United States ; in addition to which, we were prosecuting a very productive salmon and mackarel fishery, in the same vicinity, as most of the pickled fish we had received for some years prior to the war were caught on those shores.

" This *Coast Fishery*, then, most highly important and invaluable as I think it must be admitted to be, even from the foregoing hasty and imperfect sketch of it, merits every possible degree of attention and effort for its preservation on the part of the government of the United States. The refusal of the British commissioners to renew or recognise the stipulation of the treaty of 1783, respecting it, and the notification, I hope not formally given, that it would not hereafter be permitted without an equivalent, are alarming indications in reference to the future peaceable prosecution of this fishery, and of the dispositions of the British government with regard to it.

" The difference of expression used in the third article of the treaty of peace of 1783, as to the *right* of fishing on the Banks of Newfoundland, and the *liberty* of fishing on the coasts of the British provinces in North America, however it might have originated, affords a diversity of expression which, in the present instance, will be seized, and be made to give the partizans of Great Britain and of the provinces a popular colour of justice in support of their arguments, when they contend, as I think they probably will do, that in so important a compact the variance of language could not have been a matter of accident; that if precision in the use of terms in their most literal sense is any where to be expected, it is certainly to be looked for in an instrument which is to form the paramount law between two nations, whose clashing interests have brought them into collision, and which is generally framed by men

of the most distinguished talents of each party, the acuteness of whose conceptions is always kept in full play by the contending pretensions they have respectively to consult and sustain ; and that therefore a distinction was made, and was intended to be made, at the time of the negotiation between a right derived from the God of nature, and to be exercised on the common field of his bounty, the great high-way of nations; and the *liberty*, permission, or indulgence, as they will term it, to continue the exercise of an employment on the coast at the very doors, and within the peculiar and especial jurisdiction, of another nation : the one according to this doctrine being a right inherent and not to be drawn in question, the other a sufferance open to modification or denial altogether subsequently to a war, according to the will or the interests of the party originally acceding to it.

" The *liberty*, for the expression of the treaty in the discussion between the two nations must be admitted, whether it operate adversely or favourably to us, rests for its own continuance either as we assert on the ground of right as an anterior possession and a perpetual franchise, or as the British will contend on the existence of the treaty of 1783. The first ground to be supported on the view taken of it in your own letter and in that which you had the goodness to communicate to me, and even on the second, admitting pro forma that a declaration of war does ipso facto abrogate all previous treaty stipulations brought into contest by it, unless tacitly or expressly renewed by a new treaty to be an acknowledged principle of international law, still the right in question could, I believe, rest untouched and unaffected, although I know not with what degree of decision or determination the negation of a future use of the coast fisheries was brought forward in the negotiations at Ghent by the British commissioners. But while on the one hand the coupling the offer to treat for a renewal of the liberty of the coast fisheries for an equivalent with a proposition to treat for a renewal of the right of the free navigation of the Mississippi, also for an equivalent, unless, as has been suspected, they were made with the insidious purpose of obtaining an admission that both had already ceased to exist, shows the confidence they would wish to appear to entertain in the soundness of their position, that the war had extinguished both the right and the liberty ; for the former, the free navigation of the Mississippi, if force of language and repetition are to have any weight, could not well have been placed on a stronger basis, it being very expressly and explicitly contracted for in the treaty of 1783, recognised in that of 1794, and again mentioned in a provisional article in 1796, still on the other hand, the omission in the new treaty to state that the treaty of 1783 had expired or been annulled, and a reference having been made to it in several instances, is a yet stronger evidence that they *did* consider that treaty as remaining in existence and of consequence, entitled to respect and observance in all such of its provisions as had not been specially contravened in the new treaty.

"A liberty was recognised by the treaty of 1783, for the inhabitants of the United States to prosecute the fisheries on the coasts of British North America, with the exception of the island of Newfoundland, not only where the parties had been accustomed to use them, but where British fishermen not only *did* but might thereafter (that is subsequently to the date of the treaty) prosecute them, and this *right*, for it had now become a *right of liberty or use*, demanded by the one party and admitted and acknowledged by the other, was wholly without limits as to its duration, and could then only cease or the limitation take effect on the happening of one of three events, that is, the surrender of the party possessing the right and the annulment of the treaty which confirmed it, or by an usurped and unjustifiable exercise of power on the one part in defiance of the rights of the other, and in violation of those common principles of good faith which can alone regulate the intercourse between nations; but the surrender of the right has not been made by the United States, and the treaty of 1783 has not been annihilated by the existence of the war, because the parties have not only not agreed to abrogate it, but have expressly referred to it, and in the treaty of Ghent made a provision to carry the stipulations as to boundaries of the treaty of 1783, more fully and completely into effect: now it being an uncontroverted principle of the law of evidence, that the whole must be admitted if a part is received, unless some reciprocal and mutual agreement exists to the contrary, and as no such stipulation does exist in the present case, the treaty of 1783, is, as I should contend, even by the showing of the British commissioners themselves, still in existence, with all the rights and liberties incident to it, with the full and free use to the inhabitants of the United States of the fisheries, as formerly recognised and secured to the United States by that treaty.

"This is the construction, whether to be supported on this ground or any other, which I hope the government of our country will maintain. It is a right most highly important to the eastern section, and, indeed, to the present and future naval and commercial power of the United States; and should the British ministry or the colonial authorities attempt to interdict this fishery, as I think they now will, to the inhabitants of the United States, the government ought, and I trust will, take the most prompt and effectual measures to obtain and enforce a renewal or recognition of this right as it has heretofore existed. It is a gem which should never be surrendered, nor can it ever be abandoned by any statesman, alive to the interests of his country: compared in its consequences with a free right of navigating the Mississippi, it is even a much more unequal stake than would be "six French rapiers imponed against six Barbary horses."

"The right of navigating the Mississippi, since the acquisition of Louisiana and the possession of both sides of the river by the United States, and when the difficulties of the ascending navigation are considered, and the jealousy and inconvenience which the

subjects of Great Britain must experience from attempting to avail of it, can be of little value to her, except as in its higher branches and on the Missouri, it may facilitate the prosecution of the fur trade. This trade, however, although it employs a large number of persons, never has been very important to the nation, and must from the operation of unavoidable causes, gradually lessen, and in the course of a few years probably recede altogether from the great rivers. She has, therefore, notwithstanding the opinion of two of the American commissioners and her own probable pretensions of fairness given up nothing in point of value compared with the fisheries, which, upon the same ground, she is undoubtedly desirous of fortifying herself in withholding.

"In compliance with the intimation you had given me, I have commented on this subject at much greater length even than I had contemplated at the outset, perhaps, too minutely when I recollect that a part of it at least must be much better understood at Quincy than by myself, but the account of the recent state of these fisheries and the mode in which they were prosecuted, I thought might not be unacceptable to you. My information with regard to them, has in general been derived from respectable sources upon which I can rely, never having had any direct interest or concern in the fisheries myself. I have not attempted to apply the principles of public law to the question respecting them, because the few books of this description which I possess, are still at Washington; and since the rising of the council, I have not had time to make any research elsewhere, and because I presume this part of the business will be placed under the hands of those who will have both the means and the ability to do it ample justice.

"I had intended also in reference to the treaty of 1814, to have made some few remarks upon the interdiction it may occasion, of a trade between the United States and the British ports in India, and on its operation upon the contested boundary on our North Eastern frontier, so far as regards the right of possession to the Islands of Dudley, Moose, and Frederick, in the Bay of Passamaquoddy. I have, however, already so unduly trespassed on your patience, that I will only not omit them altogether. Both these objects attach to them some importance, but compared in point of value with the possession of the fisheries, perhaps in a ratio not much greater than the bullion in the mint at Philadelphia would be to the ore in the mines of Peru.

"Feeling persuaded that in avowing the hope that all these objects may be disposed of in such a manner as best to confirm the rights and secure the interests of the United States, I shall unite fully in sentiment with yourself.

"I have the honour to remain, sir, with great consideration, your very respectful and obedient servant,

"JAMES LLOYD."

The following letter from a very respectable merchant, concerned himself in the fisheries, contains further interesting details—

Boston, May 20th, 1815.

"Dear sir: Argeeably to your request to me, I have endeavoured to obtain every information in my power relative to our fisheries in this and the neighbouring States, with their tonnage, number of men employed, quantity of fish caught, quantity of salt used, and the probable price they averaged at foreign markets. As I was not acquainted with this business before our revolutionary war, I shall endeavour to give you a statement from the year 1790 to 1810; to some my account may appear large or much exaggerated; but I have conversed with several gentlemen who have been largely concerned in the business, and two of them took much pains to ascertain the number, etc. some time since; and I find they go far beyond me; but I shall endeavour to give you as correct a statement as I can, and wish it may prove satisfactory to you.

"Your humble servant."

"My calculation is, that there were employed in the Bank, Labrador, and Bay fisheries, the years above mentioned, 1232 vessels *yearly*, viz. 584 to the Banks, and 648 to the Bay and Labrador. I think the 584 Bankers may be put down 36,540 tons, navigated by 4,627 men and boys, (each vessel carrying one boy,) they take and cure, annually, 510,700 quintals of fish; they average about three fares a year, consume, annually, 81,170 hhds. salt, the average cost of these vessels is about $ 2,000 each; the average price of these fish at foreign markets is $ 6 per quintal; these vessels also make from their fish, annually, 17,520 barrels of oil, which commands about $ 10 per barrel, their equipments cost about $ 900, annually, exclusive of salt.

"The 648 vessels that fish at the Labrador and Bay, I put down 48,600 tons, navigated by 5,832 men and boys; they take and cure, annually, 648,000 quintals of fish; they go but one fare a year; consume, annually, 97,200 hhds. of salt. The average cost of these vessels is about $ 1600; the cost of their equipments, provisions, etc. is 1050 dollars: those descriptions of vessels are not so valuable as the bankers, more particularly those that go from the District of Maine, Connecticut, and Rhode-Island, as they are mostly sloops of no very great value; most of these vessels cure a part of their fish where they catch them, on the beach, rocks, etc. and the rest after they return home; several cargoes of dry fish are shipped yearly from the Labrador direct for Europe. The usual markets for those fish are in the Mediterranean, say Alicant, Leghorn, Naples, Marseilles, etc. as those markets prefer small fish, and the *greatest* part of the fish caught up the bay and Labrador are *very* small. The average price of these fish at the market they are disposed of is $ 5; these vessels also make from their fish

about 20,000 bbls. of oil, which always meets a ready sale and at handsome prices, say from $8 to $12 per barrel, the most of it is consumed in the United States.

"1232 vessels employed in the Bank, Bay, and Labrador fisheries, measuring - - - Tons, 85,140

Number of men they are navigated by,	10,459
Number of hhds. salt they consume,	178.370 hhds.
Quantity of fish they take and cure,	1,158,700 quintals.
Barrels of oil they make,	37,520 barrels.

"There are also a description of vessels called jiggers or small schooners of about from 30 to 45 tons that fish in the South Channel, on the Shoals and Cape Sables, their number 300, they carry about 4 or 5 hands, say 1200 men, and take about 75,000 qtls. of fish, annually; consume 12,000 hhds. of salt, and make about 4,000 barrels of oil; their fish is generally sold for the West Indies and home consumption.

"There are another description of fishing vessels commonly called Chebacco Boats or Pink Sterns; their number 600; they are from 10 to 28 tons, and carry two men and one boy each, say 1,800 hands; they consume 15,000 hhds. of salt, and take and cure 120,000 quintals of fish, annually. These fish also are wholly used for home and West India market, except the very first they take early in the spring, which are very nice indeed, and are sent to the Bilbao market, in Spain, where they always bring a great price; they make 9,000 barrels of oil; these vessels measure about 10,800 tons.

"There are also about 200 schooners employed in the mackerel fishery, measuring 8,000 tons, they carry 1,600 men and boys, they take 50,000 barrels, annually, and consume 6,000 hhds salt.

"The alewive, shad, salmon, and herring fishery is also immense, and consumes a great quantity of salt.

"Whole number of fishing vessels of all descriptions 2,332

Measuring - - Tons,	115,940
Number of men navigated by,	15,059
Salt they consume, - - -	265,370 hhds.
Quantity of fish they take and cure,	1,353,700 quintals.
Number of barrels of oil, -	50,520 barrels.
Number of barrels of mackerel,	50,000 barrels,

"There are many gentlemen assert, and *roundly* too, that one year there were at the Labrador and Bay, over 1,700 sail beside the bankers; but I feel very confident they are *much* mistaken, it is impossible it can be correct."

These papers will suffice to show what reliance is to be placed on that information concerning the *value* of the fishing liberties, as they had been enjoyed by the people of the United States from the peace of 1783, to the war of 1812, which Mr. Russell in his letter from Paris, of 11th February, 1815, says is the best information *he can* obtain; but which, in the duplicate of 1822, he di-

lates into the best information which *he and his colleagues at Ghent could* obtain, and thus represents as the information upon which they as well as he had acted. It may be proper to refer also to documents, showing, 1. The extent of the interest in the fisheries of which the British government intended at the negotiation of Ghent, to obtain from the United States the tacit or implied surrender. 2. The *value* of this interest as estimated, by *British* authorities.

The instructions from the Secretary of State to the American commissioners at Ghent, commanding them in no event to surrender the fisheries, but if such surrender should be insisted on to break off the negotiation, were dated the 24th of June, 1814. By a singular and fortunate coincidence of events they were received on the evening of the 8th of August, the very day upon which the British plenipotentiaries had notified to us the intentions of their government not to grant the liberties in the *North American fisheries*, which, as they stated, had been granted by the treaty of 1783.

In the 6th volume of Nile's Register, p. 239, under date of the 11th of June, 1814, there is a memorial of the merchants and principal resident inhabitants interested in the trade and fisheries of Newfoundland, to admiral Keats, who had been some time governor of that island, and was then about returning to England. It was dated 8th November, 1813, and in the Register was preceded by the following remarks, which serve to indicate the popular feeling of the time.

From Niles's Register of 11th June, 1814.—The Fisheries.

"The following memorial has excited considerable interest, particularly in the eastern States, so far as we have heard of its promulgation, I cannot doubt, from the high ground assumed by *Great Britain* since *her* victories on the continent, but that she will attempt to exclude us from the fisheries as the grand nursery of her seamen, etc. This opinion is strengthened by hosts of "Extracts of Letters from *England*." Let those who have calculated on the "magnanimity" of *Great Britain* look to it; those who have *expected* nothing of her justice "are blessed for they shall not be disappointed."

"The *Boston Centinel* says this memorial is alarmingly interesting. It was borne to England by admiral *Keats*, the late governor of Newfoundland, who has promised to give it his support."

"*No peace without the fisheries*" has begun to be the cry. If *patriotism* has failed, we are pleased to see that *interest* is about to unite the people; and I am very much mistaken in the character of the 'middle' and 'south' if their representatives shall for a moment abandon the one iota of the rights of the 'eastern' population, however perverse it may have been to the views of an immense majority of our citizens. If we '*pull together*' all will be well.

Extracts from the Memorial of the Newfoundland Merchants to Admiral Keats, 8th Nov. 1813.

"Conceiving that our existence as a great and independent nation must chiefly depend upon our preserving the sovereignty of the seas, the policy of excluding France and America from the advantages those nations have heretofore enjoyed in the times of peace, in this fishery, must be evident to every man of observation engaged in this branch of commerce.

"By former treaties with France and the United States of America, these powers were allowed certain privileges on those shores, banks, coast of Labrador, and in the Gulf of St. Lawrence, in the opinion of your excellency's memorialists highly impolitic, and which the wisdom of the British government never would concede except under very peculiar circumstances.

"Fifteen hundred American vessels have been known to be prosecuting the fishery at one time on the Labrador coast, bringing with them coffee, teas, spirits and other articles of contraband. ——

"The intercourse of our fishermen with these secret enemies of Britain, has an effect not less fatal to their moral character than to our fishery. The small planters and catchers of fish which make the great body of the people on the coast of Labrador under the influence of notions imbibed by their daily intercourse with men whose interests are at war with ours, become dissatisfied with their supplying merchants who are unable to meet their foreign competitors upon equal ground. The next step, as experience shows, is the neglect of the only means in their power to discharge their debts, disobedience and insubordination follow, and finally, their minds become alienated from their own government, and they emigrate to another, to the great loss of their country.

"In times of peace, besides, the citizens of the United States resort, in great numbers, to the Banks, where they anchor in violation of express stipulations to the great annoyance of this valuable branch of the Newfoundland trade. Nor is it possible that the strictest vigilance is often able to detect them in the breach of such stipulations.

"The evils growing out of impolitic concessions to insidious friends, are more extensive than your excellency's memorialists have yet stated; they accompany our commerce into the markets of Europe and the West-Indies.

"In the United States, men, provisions, and every other article of outfit are procured upon much better terms than the nature of things will admit with the British. These combined advantages enable them to undersell the British merchant in the foreign market. Hence heavy losses have often by him been sustained, and must always be sustained under similar circumstances. ————

"The increased advantages since the commencement of hostilities with America, derived to both our import and export trade, having now no competitors in the foreign market, and what is of

the last and highest importance, the increase of our means to make mariners, while those of our enemies must, in the same proportion, be crippled, show the wisdom of preserving the 'vantage ground' we now stand upon. And your excellency's memorialists feel the more urgent in their present representation, as the prospects which happily have recently opened in Europe, may afford a well-grounded hope that the time is not very remote when negotiations may be opened for the return of permanent peace.

"From the protection afforded to the trade of this island by your excellency, as well as by his excellency, sir John B. Warren, a great number of fishing vessels have gone to Labrador from Nova-Scotia, the number of them employed on the Labrador shores this season has been double, and the absence of their former intruders has enabled them to fish unmolested. Your excellency's memorialists beg to press upon your serious consideration, of which they cannot too often urge the important policy, should fortunately the circumstances of Europe ultimately encourage such a hope, of wholly excluding foreigners from sharing again in the advantages of fishing, from which a large proportion of our best national defence will be derived."

The following extracts from Colquhoun's Treatise on the Wealth, Power, and Resources of the British empire, further illustrate the views of the British government in relation to the contested fisheries at the negotiation of Ghent, and the *value* of these fisheries. The first edition of Colquhoun's work was published on the 20th of July, 1814; the second edition, from which these extracts were made, on the 18th of April, 1815. In the interval between these two periods, the negotiation at Ghent commenced and terminated, and Mr. Russell's letter from Paris was written.

Extracts from Colquhoun's Treatise on the Wealth, Power, and Resources of the British empire—2d edit. 1815.

"The *value* of these fisheries (of the British colonies in North "America,) to the parent state, will be more obvious after the "lapse of 20 or 30 years, than at present. Certain it is, however, "that their value *is beyond all calculation*: and their preservation "as a part of the British empire, is of the most vital importance." —p. 16, note. See also p. 424.

The *value* of these fisheries, in the table No. 8, p. 36, is estimated at £7,550,000 sterling.

"New-Brunswick and Nova-Scotia, from being both watered by "the Bay of Fundy, enjoy advantages over Canada, which more "than compensate a greater sterility of soil. These are to be "traced to the valuable and extensive fisheries in the Bay of Fun- "dy, which, in point of abundance and variety of the finest fish, "exceed all calculation, and may be considered as a mine of gold-

" a treasure which cannot be estimated too high, since with little " labour, comparatively speaking, enough could be obtained to feed " all Europe." pp. 312–313.

" Since the trade with the United States has been so greatly ob- " structed, the produce of the fisheries in the British colonies, thus " encouraged by the removal of all competition, has been greatly " augmented ; and nothing but a more extended population is re- " quired to carry this valuable branch of trade almost to any given " extent.

" It will be seen by a reference to the notes in the table annex- " ed to this chapter, that *the inhabitants of the United States* derive " incalculable advantages, and employ a vast number of men and " vessels in the fishery in the river St. Lawrence, and on the coast " of Nova Scotia, *which exclusively belong to Great Britain.* The " dense population of the Northern States, and their local situation " in the vicinity of the most prolific fishing stations, have enabled " them to acquire vast wealth by the indulgence of this country." p. 313.

" It ought ever to be kept in view, that (with the exception of the " small islands of St. Pierre and Miguelon, restored to France by " the treaty of Paris, in May, 1814,) the whole of the most valua- " ble fisheries in North America *exclusively belong at this present* " *time to the British crown*, which gives to this country a monopoly " in all the markets in Europe and the West Indies, or a right to a " certain valuable consideration from all foreign nations, to whom " the British government may concede the privilege of carrying on " a fishery in these seas." p. 314.

" Private fisheries are a source of great profit to the individuals, " in this and other countries, who have acquired a right to such " fisheries. Why, therefore, should not the united kingdom de- " rive a similar advantage from the fisheries it possesses within the " range of its extensive territories in North America, (perhaps the " richest and most prolific in the world,) by declaring every ship " and vessel liable to confiscation which should presume to fish in " those seas without previously paying a tonnage duty, and receiv- " ing a license limited to a certain period when fish may be caught, " with the privilege of curing such fish in the British territories ? " All nations to have an equal claim to such licenses, limited to cer- " tain stations, but to permit none to supply the British West-In- " dies, except his majesty's subjects, whether resident in the colo- " nies or in the parent state." p. 315.

(E.) *St. John's or Prince Edward's Island.*

" Fisheries.——This island is of the highest importance to the " united kingdom. Whether the possession of it be considered with " relation to the Americans, or as an acquisition of a great maritime " power, it is worthy of the most particular attention of govern- " ment. Mr. Stewart has justly remarked, in his account of that " island, (page 296,) that ' the fishery carried on, from the Ame-

" rican States, in the Gulf of St. Lawrence, for some years past, is " very extensive, and is known to be one of the greatest resources " of the wealth of the Eastern States, from which about 2000 " schooners, of from 70 to 100 tons, are annually sent into the Gulf; " of these, about 1400 make their fish in the Straits of Bellisle, and " on the Labrador shore, from whence what is intended for the " European market is shipped off, without being sent to their own " ports. About six hundred American schooners make their fares " on the north side of the island, and often make two trips in a sea- " son, returning with full cargoes to their own ports, where the fish " are dried. The number of men employed in this fishery is esti- " mated at between fifteen and twenty thousand, and the profits on " it are known to be very great. To see such a source of wealth " and naval power on our own coasts, and in our very harbours, " abandoned to the Americans, is much to be regretted, and would " be distressing, were it not that the means of re-occupying the " whole, with such advantages as must soon preclude all competi- " tion, is afforded in the cultivation and settlement of Prince Ed- " ward's Island." pp. 318, 319.

It remains only to notice the painful and invidious industry with which Mr. Russell inculcates the doctrine, that because the direct and immediate interest in these fisheries was confined to the State of Massachusetts, they were, therefore, of no value, either as right, or possession, to the rest of the Union. If any thing could add to the incorrect moral character of this doctrine, it would be the claim of merit for enlarged patriotism and more than disinterested virtue in maintaining it. When imputing to the majority of the Ghent mission, the phantom of his own fancy, by assuming that they had rested a right to the fisheries upon *prescription*, among his battering rams against this wind-mill, is the argument that the United States, including their new acquisition of Louisiana, could not claim by *prescription*, a right which had been exercised only by the people of Massachusetts. The essence of this enlarged patriotic sentiment is, that a possession or *liberty*, the enjoyment or exercise of which is, from local causes, confined to one State, is not, and cannot be, a possession or liberty of the whole Union. For suppose *prescription had been* our only title to this liberty; Mr. Russell's argument is, that it could not be the *liberty* of the whole Union, because, if it were, it would have been *abrogated* by the acquisition of Louisiana; and the point where this profound investigation lands him, is, to use his own words, that for the fishing liberty "WE ARE CONSEQUENTLY LEFT WITHOUT ANY TITLE TO IT " WHATSOEVER." This was the last result of his enlarged patriotism: for, as to the insinuation in the joint letter of 25th December, 1814, which he had signed, that the fishing liberty was a stipulated participation of territorial jurisdiction, for necessary purposes of the fishery, reserved by the United States in the treaty of separation between the two nations; this pretension, he says,

however lofty, is so inconsistent with the circumstances of the case, and with any *sober* construction which can be given to that treaty, that he desires to be excused from seriously examining its validity. From this contemptuous reference to a position to which he had subscribed without hinting an objection, and which he cannot answer, would not one imagine that the treaty of 1783 was a capitulation of vanquished subjects at the feet of a victorious and magnanimous master? Mr. Russell's spirit of independence, like his patriotism, is bold and intrepid in generalities, pliant and submissive in particulars. He gravely tells you, that until the Revolution, the fishing liberties of the colonies were held at the bare pleasure of the crown. He is so anxious for the repurchase of our forfeited fishing liberties, that he is willing to give for them an equivalent *wherever it may be found;* provided always, that it shall not be the continuance of a harmless right to travel upon a Western highway. He disclaims all pretension to a *liberty* of his country stipulated in a treaty, unless as a gracious temporary donation from the bounty of his Britannic majesty, which, at the first blast of war, the monarch had rightfully resumed; and although he has signed his name with his colleagues to numerous papers claiming it as a permanent stipulated right, unalienable but by our own renunciation, and in no wise held at the will of the British king, he will not be thought so simple as to have believed a word of what he has concurred in saying, or to have imagined that at the treaty of 1783, the situation of the parties was such that the United States *could* bargain for the fishing liberties, or receive them otherwise than as precarious and temporary grants, resumable at the will of the grantor, so as to leave us "*without any title to them whatsoever.*" Was Mr. Russell ignorant, that through a large portion of the Revolutionary war, it was a deliberate and determined purpose of Congress that the United States should include the northern British provinces? That express provision for the admission of Canada into the Union, was made, in the Confederation of 1781? That, finally, when Congress prescribed the boundary line, which, for the sake of peace, they would accept, and which was that stipulated in the treaty, they passed various resolutions, declaring the rights of the United States in the fisheries, and the necessity of stipulating for them, if possible, by the treaty; but that under no circumstances, whatever, were they to be given up? That in all the deliberations of Congress the necessity of this reservation was avowedly connected with the abandonment of the pretension to include all the northern provinces in the Confederation? That the terms of the treaty of 1783, or rather of the preliminaries of 1782, which were word for word the same, were almost entirely dictated by the United States? That this very third article, securing the fisheries, and that very portion of it stipulating for the liberty within British jurisdiction, was made a sine qua non, by the American commissioners, two of whom expressly declared that *they would not sign the treaty without it?* and to solve Mr. Russell's scruples, whether an interest of the State of

Massachusetts is an interest of the whole Union—that one of those two commissioners was a citizen of South-Carolina? If Mr. Russell is ignorant of all this, it only shows his incompetency to give any opinion the subject. If he is not, with what colour of justice can he pretend, from the relative situation of the parties to the treaty of 1783, that the pretension of having *reserved* the fishing liberty as a permanent participation of jurisdiction, while abandoning the claim to the territory itself, was a vain-glorious boast, too ridiculous to deserve an answer?

Mr. Russell does not leave us, however, to indirect inferences, for the conclusion, that in his estimates, a great interest of Massachusetts was of none to the rest of the Union; for he expressly says, in his original letter of 11th February, 1815, and in his second revision of it, published in the National Gazette of 10th May, that the people of the whole Western Country, the "unoffending "citizens of an immense tract of territory," were "NOT AT ALL "benefited by the fishing privilege."

In the revision of the *duplicate*, for the eye of the House of Representatives, and of the nation, made in 1822, this passage is one of those which appears to have smitten the conscience of the writer; for in that version, he qualified the words *not at all*, by adding to them, "*or but faintly*," so that it reads, "the unoffending citi- "zens of an immense tract of territory, *not at all*, OR BUT FAINTLY, "*benefited by the fishing privilege*;" but then again, as if grudging even this concession to the fishermen, he takes care in the same sentence to reduce it in degree as much as he enlarges it in extent, by adding to his "doubtful accommodation of a few fisher- "men," the words "annually decreasing in number."

It was not so that the patriots and sages of our Revolution were wont to reason or to feel. On the 19th of June, 1779, a resolution was moved in Congress, by Mr. Gerry—"That it is essential to "the welfare of these United States, that the inhabitants thereof, "at the expiration of the war, should continue to enjoy the free "and undisturbed exercise of their common right to fish on the "Banks of Newfoundland, and the other fishing banks and seas of "North America, preserving inviolate the treaties between France "and the said States."

In the debate upon this resolution, a motion was made by Mr. John Dickinson, to insert the word ALL, before "these United States," and the word was inserted by a vote of ten States out of twelve. And so, on the 24th of June, the resolution passed—that it was essential to the welfare of *all* these United States, that they should continue to enjoy the fisheries after the war.

It is, indeed, only upon the principle that an interest important to one section of the Union, is and ought to be considered and supported as the interest of the whole, that a right of excluding British subjects from the navigation of the Mississippi, could be claimed or contended for, as the interest of the whole Union. It is an interest, whether great or small, essentially local, and admitting to the fullest

extent, that it is, nevertheless, an interest of the whole Union, I only claim that other interests, alike local in their exercise, should be entitled to the same benefit. If the gain by the war, of a right to interdict British subjects from descending the Mississippi river, had been to the people of the West an object of profit as great as the privation of the fishing liberties by the same war would have been to the people of the East an object of *loss*, the *interests*, as concerned the whole, would have been equally balanced; but inasmuch as the duty of preserving possessions already and before enjoyed, is paramount to that of making new acquisitions, the principle of equity, as well as the spirit of union, would have dictated as the true policy, that of maintaining both interests in the state in which they had been before the war, rather than that of sacrificing one part of the Union for the profit of another.

If the comparative value of the two interests had been as disproportionate as they have been represented by Mr. Russell, and the balance of value had been on the side to which he assigns it, still the question of *right*, remaining the same, the small interest of the East could not with justice have been sacrificed to the greater interest of the West, without compensation. For although the whole Union may possess the power of preferring the interests of the many to those of the few, they have no power of arbitrary disposal over the *liberties* of the smallest portion of the community. If, by a solemn article of the Constitution, it is provided that the private property of the humblest individual shall not be taken for *public* use, without just compensation, how much more imperious is the prohibition of taking away the scanty and hard-earned livelihood of a few fishermen, even were they annually decreasing in number, to bestow new and exclusive benefits upon a distant portion of population, without compensation to the indigent, without consolation to the bereaved sufferer.

CONCLUSION.

The interests of the West are the interests of the whole Union—and so are the interests of the East;—and let the statesmen who are the servants of the whole, beware of setting them in conflict with each other. A review of these papers will show that the interest really *at stake* in the negotiation of Ghent, a deep and important stake, was an interest of the *East;* that there was *no* Western interest affected by the article first proposed by Mr. Gallatin, or by the amendment finally offered to the British plenipotentiaries at his proposal, and rejected; that the only *plausible* objection to it, rested upon a gratuitous assumption, contrary to all reason and experience, that it would have given a right of access to, and of intercourse with, our *Indians*, to the British. This, the British had possessed by another article of another treaty, acknowledged to be extinguished by the war—but it would no more have been granted to them, by a right to navigate the Mississippi, than by a right to enter the harbour of New-York. The whole argument rested upon a fallacy; a mis-statement of the question. Happy would it have been for Mr. Russell, if, after assenting and pledging his signatures to the decision of the majority, he had as cautiously withheld from his government, and his country, the allegation of his reasons for having voted against it, as he did at the time of the discussion, from his colleagues. But, in the vehemence of his zeal to vindicate his motives for one unfortunate vote at Ghent, which but for himself would probably never have been known to the world, he has been necessitated to assert principles of international and municipal law, and to put forth statements as of fact, more unsubstantial than the pageant of a vision. He has been reduced to the melancholy office of misrepresenting the subject of which he treats, the conduct and sentiments of his colleagues in a great national trust and his own. He has been compelled to disavow his own signatures, to contradict his own assertions, and to charge himself with his own interpolations. He has been forced to enter the lists as the champion of his country's enemy, upon a cause which he had been specially entrusted to defend and maintain—to allege the forfeiture of liberties which he had been specially instructed not to surrender—to magnify by boundless exaggerations, an ideal, and to depreciate in equal proportion, a real, interest of his country—to profess profound respect for the integrity and talents of men, while secretly denouncing their conduct as treacherous and absurd—and, finally, to traduce before the Representative Assembly of the nation, the character of the absent, and the memory of the dead.

It has been my duty, not only in justice to my own character and to that of the colleagues with whom I acted, but in respectful deference to the opinion of that nation of which we were, and two of us still are, the servants, to justify the conduct thus denounced in

the face of the country—and to prove that the letter which contained that denunciation was a tissue of misrepresentations. The attack of Mr. Russell was at first secret—addressed to the Executive officer of the administration, at the head of the department, under whose instructions the mission at Ghent had acted. It was made under the veil of concealment, and in the form of a private letter. In that respect it had failed of its object. It had neither made the Executive a convert to its doctrines, nor impaired his confidence in the members of the majority at Ghent. Defeated in this purpose, after a lapse of seven years, Mr. Russell is persuaded to believe that he can turn his letter to account, especially with the aid of such corrections of the *copy in possession* as the supposed loss of the original would enable him to make without detection, by bringing it before the Legislative Assembly of the Union. Foiled in this assault, by the discovery of the original, he steals a march upon refutation and exposure, by publishing a second variety of his letter, in a newspaper; and when the day of retribution comes, disclosing every step of his march on this winding stair, he turns upon me, with the charge of having, by the use of disingenuous artifices, led him unawares into the disclosure of a private letter, never intended for the public, and seduced him to present as a duplicate, what he had not intended to exhibit as such. To this new separate and personal charge, I have replied, by proving the paper which contains it to be, like the letter from Paris, a tissue of misrepresentations.—For the justification of myself, and of my colleagues at Ghent, nothing further was necessary. But the letter of Mr. Russell from Paris, contains doctrines with reference to law, and statements with reference to facts, involving the rights, the harmony, and the peace, of this Union.

"Dangerous conceits are in their nature *poisons*."

If the doctrines of Mr. Russell are true, the liberties of the people of the United States in the Newfoundland, Gulf of St. Lawrence, and Labrador fisheries, are at this day held by no better tenure than the pleasure of the king of Great Britain, and will be *abrogated* by the first act of hostility between the two nations.

If his statements are true, those liberties are the mere accommodation of a few fishermen, annually decreasing in number, too worthless to be accounted to the rest of the nation of any benefit at all.

If his statements are true, the propositions made by the American to the British plenipotentiaries, on the 1st of December, 1814, gave *unrestrained* and *undefined* access for the British to *the Indians* within our territories—laid our country bare to swarms of British smugglers, and British emissaries—and exposed the unoffending citizens of an immense territory to *all the horrors of savage warfare*.

I now submit to the deliberate judgment of the nation, whether I have not proved that these doctrines and statements are equally and utterly without foundation—That the rights and liberties in the

fisheries, are held at the will, not of the king of Great Britain, but of the people of the United States themselves, founded upon national right, unbroken possession, and irrevocable acknowledgment —That their value, both immediate and remote, direct and consequential, is immensely important, not only to the Commonwealth of Massachusetts, but to the whole Union—That the proposition made to the British plenipotentiaries, on the 1st of December, 1814, would, if accepted, have given to the British, instead of an unrestrained and undefined access to our Indians, no access to them whatever—That it would have given them access, even to the Mississippi river, only from a single spot in the British territories; and a right to descend the river only with merchandise upon which the duties should have been paid, and subject to all the custom-house regulations.

The question in relation to the Mississippi, can never be revived. That spectre is forever laid. Great Britain has not only disavowed the claim to it which we would have admitted as valid, she has abandoned that upon which she herself exclusively rested it. Of its *value*, in confirmation of the opinions which I have expressed, I have given extracts from the debates in parliament, on the peace of 1782, which show how it was estimated by her greatest statesmen at that time. Those estimates had been confirmed by an experience of thirty years. The slumbers of the unoffending citizens of the Western Country, can, therefore, never more be, if they ever were, disquieted by the visits of this apparition to the glimpses of the moon. But the day may come, though I trust it is far remote, when the title to our fishing liberties may again be in peril as imminent as it was at the negotiation of Ghent. And if, in that day, the American statesmen who may be charged with the defence and support of the rights, liberties, and interests of their country, should deem it among the qualifications for their office to possess some knowledge of the laws of nations, some acquaintance with the history of their country, and some patriotism more comprehensive than party spirit or sectional prejudice ever gave or ever can give, I trust in God that their proficiency will have led them to the discovery, that all treaties, and all articles of treaties, and all *liberties* recognised in treaties, are *not* abrogated by war; that our fishing liberties were neither before nor since the Revolutionary war, held at the mere pleasure of the British crown; and that the lawful interests and possessions of one section of the Union are not to be sacrified for the imaginary profit of another, either by disparaging their value, or by casting them away as the interests of *a disaffected part of the country.*

APPENDIX.

I. Western Commentaries.

In the remarks upon Mr. Russell's letter and duplicate, which were submitted to the House of Representatives, I expressed the most unqualified confidence in the *justice* of the West, and my entire conviction that however justly the inhabitants of that portion of the Union might have been incensed against the majority of the Ghent mission, upon the statements and representations of those letters, yet that when the plain unvarnished tale of real fact should be laid before them, they would not only acquit the majority of any intended sacrifice of their interests, but would find in the measure itself, distinctly disclosed to them in its own nature, nothing to disapprove. In every part of this Union, when *the whole truth* can once be exhibited to the people, there is a rectitude of public opinion which neither individual enmity, local prejudices, nor party rancour can withstand or control. Upon this public virtue of my country I have ever relied, nor has it now, nor ever disappointed me. I have the satisfaction of knowing from various sources of information, public and private, that the general sentiment of the Western Country, wherever the Remarks as well as the Letters have been read, has done justice to the intentions of the majority, as well as to the motives of Mr. Russell.

Yet, since the communication of his Letters to the House of Representatives, the uses for which it was supposed the production of them was intended, and to which they were adapted, have not been altogether abandoned in some parts of the Western Country. The St. Louis Enquirer has pursued this purpose, in the simplest form, by publishing the message of the President of the United States to the House of Representatives of 7th May; and Mr. Russell's *Private* letter, and by suppressing the Duplicate and the Remarks.

In the Kentucky Reporter, published in Lexington, and in the Argus of Western America, published at Frankfort, various publications have appeared, exhibiting similar views of the subject, representing the proposition made to the British plenipotentiaries, on the 1st of December, 1814, as a very grievous offence, and ascribing it exclusively to me. The subject has, however, been

presented in a manner more impartial, in the Louisville Public Advertiser, where, among other things, it has been inquired how, if the proposal was so very exceptionable it could, under *any* circumstances have received the sanction or signature of Mr. Clay?

The following *editorial* article in the Frankfort Argus, of 18th July, seems intended to answer that question, and although containing some severe strictures upon "the Secretary," mingles with them some candid admissions, in a spirit upon which I would with equal candour animadvert.

From the Argus of Western America, Frankfort, Kentucky, 18th July, 1822.

THE GHENT MISSION.

"Mr. Penn does not understand the circumstances attending the Ghent negotiation, or he wilfully conceals the truth.

"The first instructions given to our commissioners were, that they should not agree to any stipulation by which the pre-existing right of British subjects to trade with the Indians living within our territories, should be revived. The object of this instruction was to cut off the means of British influence among the Indians, which we had felt so fatally in that war.

"While acting under these instructions, it was proposed by Mr. Gallatin to offer the British the free navigation of the Mississippi, with access to it through our territories, on condition that the liberty to take and cure fish on the coast within the exclusive jurisdiction of the British colonies, should be continued to the citizens of the United States. This proposition was strenuously opposed by *Mr. Clay*, on the ground that it would give the British those very means of influence over the Indians of which it was the object of the government to deprive them, as evinced by their instructions. At first *Gallatin*, *Adams*, and *Bayard*, were favourable to the proposition, and *Clay* and *Russell* against it. In the end, however, *Bayard* changed sides, and it was rejected. Of course, no such proposition was made at that time.

"Subsequently, however, the overthrow of Napoleon having left us to contend single-handed with the undivided power of Great Britain, our government thought proper to change the terms offered to the British government, and accordingly sent additional instructions to Ghent, directing our commissioners to make a peace if practicable, upon the simple condition, that each party should be placed in the same situation in which the war found them.

"At the commencement of the war, the British had a right by treaty, not only to navigate the Mississippi, but to trade with all our western Indians. Of course our commissioners were instructed to consent to the continuance of this right, if no better terms could be procured. Under these instructions a proposition relative to the Mississippi and the fisheries, similar to that which had been rejected, was again presented, adopted, and sent to the British commissioners. But it did not restore the right to navigate the

Mississippi in as full a manner as the British government desired, and on that account, we presume, was rejected.

"Now we believe the truth to be, that *Mr. Clay* still opposed this proposition, believing that it never ought to be made by our government, and perhaps was not necessary to the conclusion of the peace. But as the government had authorized a treaty to be made on the *status ante bellum*, and as the proposition amounted to nothing more, he did not refuse to sign his name to the letter which contained not only that, but all the other propositions made in the treaty.

"The Secretary, in his strictures, confounds together the discussions which took place before and after the reception of the additional instructions, by which means more discriminating heads than Penn's have been deceived.

"The commissioners at Ghent assumed the principle, that the right to the fisheries in British waters, on our side, and the right to navigate the Mississippi, on their side, secured by the treaty of '83, were not abrogated by the war, but continued in full force without any new stipulation at the peace. The Secretary calls this *the American side of the argument*, and exults, with many thanks to God, that it has been sustained through subsequent negotiations, and particularly in forming the convention with Great Britain in 1818. Surely this exultation is not only without cause, but contrary to reason. If the principle so strenuously asserted by him be correct, what have we gained by it? At the close of the war our right to the fisheries and the British right to navigate the Mississippi, existed to the full extent at which they were secured by the treaty of '83, and would have continued so to exist without any additional stipulation until this moment. But the convention of 1818, *restricts* our fishing liberties, and *says not a word about the navigation of the Mississippi*. Hence, if the Secretary's position be sound, we have lost by it a part of our fishing liberties, and the British retain the right to navigate the Mississippi in its fullest extent! How can the Secretary *consistently* say, that they abandoned this right in the convention of 1818, when not a word is said about it in that compact? If he were President and the British were to claim the right to navigate the Mississippi to-morrow, he would be obliged to grant their claim valid or contradict his own favourite principle!!"

Remarks on the Above Editorial Article.

This article admits that Mr. Clay *did not refuse* to sign his name to the proposition made to the British plenipotentiaries on the 1st of December, 1814, of confirming to the British the right of navigating the Mississippi. It admits that the proposition was fully warranted by the instructions of 19th October, 1814, and formally assigns *them*, as his motive for *not refusing* his assent to the proposal. It does, indeed, say that he believed the proposition

never ought to be made by our government, and *perhaps* was not necessary to the conclusion of the peace. The *perhaps* it was not, of course implies that *perhaps* it was necessary to the conclusion of the peace, and in candid reasoning is of itself sufficient to justify the majority in the determination to make the proposal, which they did believe to be necessary.

In transferring the blame, whatever it might be, of *making the proposition*, from the majority of the mission, who only executed, to *the government* which issued the instructions, under which Mr. Clay did not refuse his signature, a new field of argument is opened, not very reconcileable with any portion of Mr. Russell's papers on this subject. Mr. Russell's duplicate alleges that the proposition was in positive and wilful violation of instructions, explicit and implicit. Mr. Russell in the Boston Statesman of 27th June last, affirms that the instructions of 19th October, 1814, had no effect whatever on the proposition to the British plenipotentiaries of 1st December; that no vote in the mission was taken after the instructions of 19th October were received—and he appeals to Mr. Clay to confirm this statement.

It is, to be sure, a matter of opinion, whether *the government* ought to have given the instructions of 19th October, 1814, or not, upon which every member of the Ghent mission, individually, had the right of entertaining his own opinion. There may be extreme cases in which a public minister would be justified in refusing his signature to a proposition warranted or even required by the instructions of his government: a member of a commission may indulge himself in this respect with a much greater latitude than a single plenipotentiary, for the obvious reason that the instructions may be executed without his assent. Mr. Clay, therefore, might have withheld his signature from the proposition which was made on the 1st of December, 1814, as he had said he should withhold it from that which had been voted on the 5th of November. The reason assigned in the editorial article of the Argus, for his having taken a different course, namely, the receipt in the interval between the two periods of the *new instructions* from the government, is amply sufficient to justify him for yielding his assent at last, but in candid reasoning, if it justified him in pledging his signature to a measure which he disapproved, it surely more than justified the majority, in determining to offer a proposition, which they approved, and for which they had been prepared even before those instructions had been received.

The editorial article in the Argus, admits, in amplest form, that at the commencement of the war, the British had the right to navigate the Mississippi, and that the commissioners *were instructed* to consent to the continuance of this right, if no better terms could be procured. But it intimates the belief of Mr. Clay, that the government *ought* never to have issued such instructions. Yet the reason stated in the editorial article itself, as the inducing motive of the government to this measure, is weighty, and whoever

will duly consider the situation and circumstances of this nation and its government, in October, 1814, will, I believe, not be very ready to join in a censure upon the government for offering a peace on the basis of the state before the war. There was then a heavy responsibility, both upon the government and upon the mission at Ghent, that the war should be concluded. This nation would have ill-brooked a rupture of the negotiation upon light or trivial causes, and if it had been broken off upon a refusal *to continue* to the British a mere nominal right to navigate the Mississippi, possessed by them and harmless to us until the war had begun, the government and the mission would have had a very different task to justify themselves to this country, from that which they now have. If, instead of writing his letter of 11th February, 1815, from Paris, Mr. Russell had brought the substance of it home in his pocket, with the war still raging, and he had said, We have not concluded the peace—we have broken off the negotiation—but here are our reasons—producing his letter of seven sheets against the Mississippi navigation, and the fisheries—What would the nation and the world have said of the American government and the American mission at Ghent? After the responsibility has been removed, and the peace concluded, it is very easy to "enjoy the good and cavil the conditions"—but in this case, measure still harder is dealt out to the government and the majority of the mission: after the good is secured, the cavil is against conditions not annexed to it, but merely once proposed—not against an actual stipulation, but against a rejected offer—against a possibility extinct.

It is sufficient for the justification of the majority of the mission that it was authorized, and that they believed it to be required by their instructions. But I cannot pass over this censure upon the government for issuing the instructions themselves, without notice. Far from deeming them blameable, I believe them to have been wise and meritorious. The instructions not to surrender the fisheries, even at the hazard of breaking off the negotiation, manifested a sensibility congenial to the true and essential interests of the country. I have in these papers furnished proof that the interest in the fisheries *at stake* in the negotiation, was great and important. The disquisitions in the Western newspapers on this subject, dwell largely upon the state of politics then prevailing in the Eastern section of the Union. This is an invidious topic, and I wish to dismiss it, with this observation, that the administration of Mr. Madison could not have honoured itself more than by maintaining with inflexible energy against the enemy, the special interest of that portion of the Union which had been most opposed to the war. But had that illustrious statesman and patriot suffered himself on that occasion to be influenced by narrower considerations, it could not escape him, that however exceptionable the political course of the State of Massachusetts might be, the portion of *the people*, most particularly interested in these fisheries, neither countenanced nor supported it. They had been the first, and were among the great-

est sufferers by the war, and by the restrictive measures that preceded—and they were among the most effective supporters of the war, and of the honour of the nation in the conduct of it. To have sacrificed their liberties in the fishery, would have been a stain upon the gratitude, no less than upon the justice, of the American government. The instruction to accept a peace upon the basis of the state before the war, was equally well considered. There was no time at Ghent when the British plenipotentiaries would have accepted it. The British government, *at that time*, had evidently taken a bias, from which nothing could divert them, and which was to appear to the world as if they had gained something by the war. The state before the war, *upon all the points of difference*, was actually offered to them, and they rejected it. After commencing the negotiation with the loftiest pretensions of conquest, they finally settled down into the determination merely to keep Moose Island, and the fisheries, to themselves. This was the object of their deepest solicitude. Their efforts to obtain our acquiescence in their pretension that the fishing liberties had been forfeited by the war, were unwearied. They presented it to us in every form that ingenuity could devise. It was the first stumbling block, and the last obstacle to the conclusion of the treaty. Their pretension was announced as *a preliminary*, at the beginning of the first conference, and their article proposing a future negotiation to treat for a *revival* of the liberty, was the last point from which they receded. But the wisdom and the importance of the instruction to the American mission, to agree to a peace on the basis of the state before the war, was this: it enabled them to avoid a rupture of the negotiation upon points of minor importance, and upon which the spirit of the country might not have been prepared to support the government. If upon any of the articles of the project in discussion, the parties had come to an absolute splitting point, as upon many articles they actually did, the American mission always had the general *state before the war*, to offer as *an alternative*, which would save them and the country from the danger of breaking off the negotiation upon any particular article, or any point of less than universal interest. With an enemy whose policy *might be* really to continue the war, but to throw the blame of it upon us, there was a hazard in adhering inflexibly to any one point of difference. By the power of offering the general state before the war, if the negotiation was to be broken off, it would not be in the power of the enemy to put us in the wrong for the rupture; and with that general principle, always in reserve, we were enabled to insist more perseveringly upon every particular article in discussion.

The editorial article in the Argus charges "*the Secretary*" with confounding, in his strictures (on the duplicate letters,) the discussions which took place before, and after, the reception of the additional instructions, by which means, it says, more discriminating heads than Penn's [the editor of the Louisville Public Advertiser,] have been deceived.

It is not the Secretary, but Mr. Russell, who confounds these preceding and subsequent discussions. The joint despatch of 25th December, 1814, and Mr. Russell's separate letter of the same date, say not a word of the discussions prior to the receipt of the new instructions. They refer exclusively to the vote taken on the 29th of November, and to the proposition actually made on the 1st of December. Mr. Russell's letter from Paris, confounds together the preceding and subsequent discussions. His duplicate brings in the cancelled instructions, as violated by the proposal actually made on the first of December, and his publication in the Boston Statesman of 27th June, affirms, that *no vote was taken* after the receipt of the new instructions; and calls upon Mr. Clay to confirm the assertion. It is hoped that the *discriminating heads* will find that in these pages, the Secretary has been sufficiently explicit in distinguishing between the first and second votes, and between the discussions upon both of them.

The editorial paper states that the article first proposed by Mr. Gallatin, and voted by the majority, was finally rejected, because Mr. Bayard *changed sides*. This is not altogether exact. If there was any change of sides, it was by Mr. Clay. He brought forward on the 7th of November, as a substitute for Mr. Gallatin's article, which had been voted on the 5th, the very same proposition which I had offered to take instead of Mr. Gallatin's article, *before* the vote upon it had been taken, but which Mr. Clay had not *then* been prepared to accept. Upon this new proposal of Mr. Clay, Mr. Bayard agreed, *for the sake of unanimity*, to take it instead of Mr. Gallatin's article; and so did I, and so did Mr. Gallatin himself. Mr. Bayard, of course, afterwards voted, on the 29th of November, for the proposition which was actually made on the 1st of December.

The editorial article of the Argus, after stating that the commissioners at Ghent assumed the principle, that the right to the fisheries in British waters, on our side, *and the right to navigate the Mississippi, on their side*, secured by the treaty of '83, were not abrogated by the war, but continued in full force, without any new stipulation at the peace, observes, that "the Secretary" calls this "*the American side of the argument*," and exults, with many thanks to God, that it has been sustained through subsequent negotiations, and particularly in forming the convention with Great Britain in 1818. The writer in the Argus appears to be chagrined at this exultation of the Secretary, and exceedingly anxious to deprive him of his satisfaction. But in the first place, this statement of the principle assumed by the commissioners at Ghent is again not altogether exact. The principle assumed by them, was in these words, drawn up by Mr. Clay:

"In answer to the declaration made by the British plenipoten-
"tiaries, *respecting the fisheries*, the undersigned, referring to what
"passed in the conference of the 9th August, can only state, that
"they are not authorized to bring into discussion any of the rights

" *or liberties* which the United States have heretofore enjoyed in " relation thereto. From their nature, and from the peculiar cha- " racter of the treaty of 1783, by which they were recognised, no " further stipulation has been deemed necessary by the govern- " ment of the United States to entitle them to the full enjoyment of " all of them."

This principle, thus assumed, the Secretary does call *the American side of the argument*, and with his thanks to God, that it was assumed, and has since been maintained, against the *British side of the argument*, announced in the conference of 8th August, 1814, and to which this paragraph was the formal answer, the Secretary would not less heartily add his thanks to Mr. Clay, for having made this principle his own, by proposing it to the mission, by signing the note in which it was contained, and by maintaining it against the British plenipotentiaries, as long as it was necessary for the great interest at stake upon it, that he should maintain it. The Secretary would readily call it Mr. Clay's side of the argument, if he had reason to suppose it as unequivocally that gentleman's individual, as he had made it his official, opinion. The Secretary himself, not only pledged to it his official signature, but firmly believed, and still firmly believes it sound—warranted by the laws of nations, and sanctioned by the most eminent writers on international jurisprudence, as well as by many of the most eminent lawyers and statesmen of Great Britain. The inaccuracy of the statement in the editorial article of the Argus, is in representing the commissioners as having *assumed* the principle, in its application to the British right of navigating the Mississippi, as well as in relation to the fisheries, and on this inaccuracy is founded the censure of the Secretary for calling it *the American side of the argument*.

The commissioners *assumed* the principle, only as it was presented by Mr. Clay, and only in relation to the fisheries. It was emphatically *the American side of the argument*, and still continued so, when afterwards the British plenipotentiaries demanded a stipulation in the treaty, that British subjects should enjoy the right of navigating the Mississippi, and access to it for that purpose through our territories. The American commissioners *then* said to them: If you admit *our* principle, you need no new stipulation to secure to you this right; we are willing, however, to recognise it by a new article, declaratory of both rights. If you reject it, you have no foundation to *claim* a right of navigating the Mississippi, and, therefore, no pretence for asking it by a new stipulation. The British plenipotentiaries could not extricate themselves from this dilemma. They said they claimed the right of navigation, as an equivalent for abandoning their line of boundary *to* the Mississippi, and agreeing to the 49th parallel of latitude. We offered them to leave the boundary as it was—which they finally accepted. Throughout the whole discussion, the principle assumed by the American commissioners, was *the American side of the argument*.

It was still so in the negotiations after the peace which terminated

in the convention of 1818, and remains the American side of the argument to this day. When, in the summer of 1815, British armed cruisers warned all American fishing vessels on the coast of Nova-Scotia to a distance of *sixty miles* from the shores, they very significantly proved what the British government had meant by *their side of the argument*, and in entering upon the negotiation, immediately afterwards and in consequence of that event, the Secretary may be allowed to speak with confidence when he says, that had it not been for the principle assumed by the commissioners at Ghent, he could not have taken the first step in it—he could not have alleged a cause of complaint—sixty miles was largely *within* the extent of exclusive British jurisdiction, as to *those* fisheries, if our liberties in them had been abrogated by the war; and the American minister in England would have had no more right to complain of this warning, or of *any* exclusion by British cruisers of American fishing vessels from any part of the Newfoundland fisheries, than of the seizure of an American vessel in the port of Liverpool for a manifest violation of the British revenue laws.

It was upon the rights and liberties, in these fisheries, as recognised in the treaty of 1783, as unimpaired by the war of 1812, and as unabrogated, although no stipulation to confirm them had been inserted in the treaty of Ghent, that the American minister in London did complain of this warning and interdiction of the American fishermen. He recurred immediately to the principle asserted by the American commissioners at Ghent, at the proposal of Mr. Clay, and consigned in their note of 10th November, 1814. On that he rested the continued claim of the United States to *all* the rights and liberties in the fisheries, recognised in the treaty of 1783, and entered upon a full discussion of the question with the British government. The result of that discussion, which was continued in the negotiation of the convention of 1818, appears in the first article of that convention. The editorial article in the Argus, says that this convention *restricts* our fishing liberties, and *says not a word about the navigation of the Mississippi.* The convention restricts the liberties in some small degree; but it enlarges them probably in a degree not less useful. It has secured the *whole* coast fishery of every part of the British dominions, except within three marine miles of the shores, with the liberty of using all the harbours, for shelter, for repairing damages, and for obtaining wood and water. It has secured the full participation in the Labrador fishery; the most important part of the whole, and that of which it was at Ghent peculiarly the intention of the British government at all events to deprive us. This fishery cannot be prosecuted without the use of the neighbouring shores, for drying and curing the fish: it is chiefly carried on in boats, close into the shores, and the loss of it, even if the rest had been left unaffected by the same principle, would have been a loss of more than half of the whole interest. The convention has also secured to us the right of drying and curing fish on a part of the island of Newfoundland, which had not

been enjoyed under the treaty of 1783: it has narrowed down the pretensions of exclusive territorial jurisdiction with reference to those fisheries, to three marine miles from the shores. Upon the whole, I consider this interest as secured by the convention of 1818, in a manner as advantageous as it had been by the treaty of 1783; we have *gained* by it, even of fishing liberties, perhaps as much as we have lost; but if not, we have gained practically the benefit of the principle, that our liberties in the fisheries recognised by the treaty of 1783, were not abrogated by the war of 1812. If they had been, we never should have obtained, without a new war, any portion of them again. The error of the editorial article in the Argus, is in putting out of sight the difference between a contested and an uncontested right. After the conclusion of the peace of Ghent, according to the *American side of the argument*, and by virtue of the principle, assumed at the proposal of Mr. Clay, the rights and liberties of the people of the United States in these fisheries, remained in full force, as they had been recognised by the treaty of 1783. According to the British side of the argument, and to the doctrine of Mr. Russell's Letter from Paris, they were *totally abrogated* by the war. The letter says, in express terms, that the *liberty* was "entirely at an end;" and, that we were left "*without any title to it whatsoever.*" If this was the real doctrine of the *minority* of the American mission at Ghent, has not the Secretary reason to exult, and to give many thanks to God, that instead of avowing it, they professed directly the contrary? That Mr. Clay himself proposed to the mission, and the mission at his proposal adopted the opposite principle, the *American side of the argument*. After the peace of Ghent, the *right* of the people of the United States to the fishing liberties was *perfect*, but it was *contested*. There was a *British side of the argument*, and what we have gained by the convention of 1818, has been an adjustment of that contest, preserving essentially the whole interest that was in dispute. The first article of the convention is upon its face the adjustment of a *contested* question. The documents of the negotiation prove *how* it was adjusted, and show that we obtained the adjustment by maintaining our principle. On the principle of the letter from Paris, there was no liberty to maintain, no right to assert, no contest to adjust: the liberty was gone, irretrievably lost.

The editorial article says, that "if the British were to claim the right to navigate the Mississippi to-morrow, the Secretary would be obliged to grant their claim valid or contradict his own favourite principle!!" The double notes of admiration annexed to this closing period of the editorial article, indicate a long cherished and intense desire to fasten upon the Secretary, in spite of all that he can say, the deep crimination of the dreadful consequences to which his favourite principle might yet lead. Mr. Russell, too, has resorted to this forlorn hope of charge against *the Secretary*. My reply to it is this—

That the principle alluded to in its application to our fishing liberties, is my *favourite* principle, I admit, knowing as I do, that it has been the means of saving them from total extinction. That it is *my own* principle, I have perhaps not more the right to say than that it *was* Mr. Clay's own principle: for it was at his proposal that it was assumed by the American mission at Ghent, and the paragraph by which it was assumed, was drawn up by him. For all possible consequences in relation to the British right of navigating the Mississippi, which may flow from the assumption of this principle, Mr. Clay so far as official acts and signatures can pledge, is as responsible as I am.

But the truth is, that the principle can no longer be applied to the British right of navigating the Mississippi, because they themselves have disclaimed it, and thereby renounced the right to the claim. The right once disclaimed, cannot again be resumed. It could not be resumed even after a tacit renunciation—a disclaimer is still more. It was precisely because acquiescence on our part in the principle asserted by the British plenipotentiaries, in their notification of 8th August, would have been a surrender and tacit renunciation of the fishing liberties, that I deemed the counter notification on our part, or a new article indispensable. But in asserting a principle just and sound in itself, in defence of our own liberties, we are in nowise bound to force it upon Great Britain, in support of any right of hers; and as she has chosen to consider her right to navigate the Mississippi by virtue of the 8th article of the treaty of 1783, as abrogated by the war, we are neither bound to obtrude upon her that which she disclaims, nor to admit the claim, should she hereafter be disposed to retract the principle.

But this is not all; the editorial article asks "how can the Secretary *consistently* say that the British abandoned this right in the convention of 1818, when not a word is said about it in that compact?" It is precisely because not a word is said in the compact about it, that the British have abandoned the right. By the second article of the convention a new boundary line is stipulated, along the 49th parallel of latitude, which of course cuts them off from the line to which they were before entitled *to* the Mississippi. Disclaiming the right secured to them by the 8th article of the treaty of 1783, the *only* ground upon which they still claimed the right, was by virtue of the line which brought them in contact with the river. At the negotiations of 1807, and at Ghent, they declined agreeing to the new line, unless with a reservation of the right to navigate the river, and of access to it, through our territories. They demanded the same thing at the negotiation of the convention of 1818, and presented an article to that effect. But they finally agreed to the new boundary line, without the reservation, and thereby abandoned their last claim to the right of navigating the river.

The editorial article in the Argus, is sufficient to justify Mr. Clay for his assent to, and concurrence with, *all* the measures

agreed upon by the majority of the Ghent mission. His services to the nation are sufficiently distinguished to enable him to dispense with the assistance of unjust aspersions upon others.

II. Mr. Floyd's Letter.

From the Richmond Enquirer of 27th August, 1822.

To the Editors of the Enquirer:

NEW-BERNE, VIRGINIA, AUGUST 14, 1822.

Gentlemen: I am induced to write to you, impelled by the numerous editorial remarks which have issued from different parts of the Union, relating to the controversy between Messrs. Russell and Adams, involving me in a greater or less degree; but more particularly from the unwarrantable assertions of Mr. Adams throughout his rejoinder.

On entering into public life, I formed a plan from which I determined never to depart, unless for the strongest reasons; and I assure you, it is with pain and regret, I now deviate from that plan. When any thing occurs in my public conduct, if it concerns myself alone, I have been content to rest my claims to justice upon the decision of those with whom I act, entirely regardless whether the newspapers, or reporters to newspapers, either misunderstand me, misrepresent me, or do not hear me.

In the commencement of this affair, I was not a little surprised to see the editorial remarks of the Weekly Register in concluding the publication of the President's message with the letters of Mr. Russell and Mr. Adams, subjecting me to imputations of "electioneering views" and the "getting up" this business: my surprise was not lessened to find any thing in my course, liable to such imputations, as I have always felt the most perfect confidence in the correctness of my course: though I have too high an opinion of the correctness and integrity of the Weekly Register to believe these remarks were intended for any other purpose, than to give an honest opinion of the transaction as it appeared to him.

With these feelings, as soon as I recovered from a severe illness, under which I was labouring when the Register was received, I wrote a statement of the whole matter, to the editor of that paper, whose independent republican course has impressed me with the most favourable sentiments of his rectitude and ability; but, thinking there would be an end to the affair very soon, and that the opportunities might offer elsewhere, of doing myself justice, I yielded to the suggestion of a friend in withholding it: nor, do I think the necessity would now exist, had the whole of the debate been published, which took place in the House of Representatives upon the adoption of Mr. Fuller's resolution, making the final call upon

the President for the papers; which now appears to have been done at the instance of Mr. Adams himself.

There is certainly something very singular in this affair, that Mr. Adams, who has laboured with so much zeal and perseverance, to impress the nation with the belief that Mr. Russell is not correct in his statements, should, nevertheless, as zealously adhere to declarations equally injurious, and unfounded as it regards myself; to the end, it is presumed, to justify his own conduct in procuring Mr. Fuller to make the call which I had desisted from, and which it seems was so desirable to him as a mean of getting into the newspapers,—this, too, after Mr. Russell had said he knew nothing of my intention of making the request I did make.

Mr. Adams, I had believed, was too well acquainted with *etiquette*, to leave his lawful game, to send a shaft at me, however he might *feel* towards me; but, since he has thought proper to do so, I must defend myself.

Whatever a Secretary shall say of me, I think it but right, to hold him responsible; nor will I consent that he shall ransack his department to find a clerk to prop his desires by a certificate. So far as it regards myself, I must protest against the certificates of clerks, who depend for their daily bread, upon the capricious smiles of a Secretary of a Department. I do not wish to be understood as making any remark upon Mr. Adams's certifying clerks. It is possible they may be respectable. I know nothing of them; nor, can I, consistent with my own self-approbation, know any body but Mr. Adams, who I presume, having reliance, and regardless of feelings or opinions, boldly and confidently, reiterates in his rejoinder, that Mr. Russell procured me, to subserve his purposes, and make the call in the House which I did make; which assertion, I unequivocally pronounce to be utterly destitute of that verity which ought always to characterize assertions made to the public.

The story is briefly this:

Last winter was a year, at my lodgings, in conversation with some of my friends, we were discussing the advantages of the occupation of the Oregon, or Columbia river, the value of the fur trade of our western rivers, the wealth to be derived from that trade in the Canton market, and the practicability of supplying the valley of the Mississippi with the manufactures of China by that route; when one gentleman observed, that the Mississippi had been discussed at Ghent, and from the character of the gentlemen engaged in it, there was a strong probability, that, if I had that correspondence, I would obtain something, which might be useful to me. I had then presented to the House, my report upon the occupation of that river, and would have to make an exposition of the bill when it came up for discussion. I instantly determined to make the call, as the proper mode of getting the papers: but, I soon found my bill for its occupation, could not, from the place it held in the orders of the day, be acted upon that session: I then determined to postpone the call until the next session. Accordingly, on

the 17th of January last, I requested all the papers; and on the 23d of February, the President answered that request, taking more than a month to prepare a copy.

Mr. Adams says, after commenting upon this, that, "it will be observed, that nearly two months had intervened, between the report of the Ghent treaty documents to the House, and this second call, which Mr. Russell has admitted was made as his suggestion."

Mr. Adams knew very well, the papers were sent to the House on the 23d of February, and not only ordered to lie on the table, as he states, but likewise *ordered to be printed:* I had not an opportunity of examining them until they were printed, which would of course require some days. But in that time, I had received intelligence of the afflictions of my family, and Mr. Adams does know, I obtained leave of absence for the remainder of the session, believing it not possible for me to return.

I left this city, I believe, about the 13th of March, but my family being restored to health, I returned to Washington, and arrived, on Sunday, the 14th of April. I went into the House on the 15th, and on the 18th submitted the second resolution, calling specifically for Mr. Russell's letter; that resolution was adopted on the 19th.

The reason of this second call was, that, on examining the papers, I could not find any thing I wanted, though I did perceive from Mr. Russell's letter, dated the 25th of December, from Ghent, that he intended to write fully, and naturally concluded he had done so, as he was a public man, and in the discharge, as I thought, of his duty; and too, expected what I wanted was contained in that letter, to wit, touching the value of the Mississippi river.

I will take no part in the controversy between Mr. Russell and Mr. Adams, nor would I now have written, had not Mr. Adams gone out of his way, in endeavouring to place me in an attitude, which he must know, nothing but his injustice could have exhibited me in.

I am almost as much surprised at the memory of the friend of the National Intelligencer, as at all the rest of this affair: he has certainly reported to that paper as far as he went "substantially" what happened in that debate; but the surprize is, that his memory fails at the precise point where my justification begins. I recollect what was said, and made these remarks, and nearly in these words: That I had made the previous calls, and had not renewed it, as the letter wanted had been specifically desired, and the President already knew the wishes of the House, and might send it if he thought proper, as he was the judge of the propriety of doing so; I did not think another resolution to the same effect would be consulting the dignity of the House; and if the papers would produce misunderstanding and ill blood, between men high in office and public esteem, which the President, who had the papers seemed to insinuate, I would not be the means of producing that evil. What I wanted was the information, which I supposed the

papers to contain relative to the value of the Mississippi, which would, according to my view of the occupation of the Columbia river, show the value of the trade to flow in that channel, which was to connect those two great rivers; and that there could not be any thing difficult to comprehend in that. That if the President would tell the House such consequences would flow from the communication, and at the same time state, that copies of the papers would be furnished to any gentleman at the Department of State, who might desire them, was a thing left for him to justify and to reconcile: I wished myself to be correct, and said this for my own justification, and to show my own consistency, and not the President's.

I will close these observations by observing to you, that I have seen in your paper a few days ago, the remarks contained in a Charleston journal. I cannot divine how the writer knew I had made a motion to refer the President's communication to my committee, *before it was read.* I conclude, though, it is much after the disinterestedness of the times, and that a diplomatic mission to some of the new republics, may be the hoped reward of the honest exertions of the writer. How was that fact ascertained? there is no record showing whether the motion was made before the papers were read or not—this minute fact is known to the writer so distant from Washington, who does not even know the part of the country I live in, as he states me to be a member from the west—it may be honest ignorance—I believe, though I did make the motion to refer the papers, as soon as it was ascertained what the papers related to. This is every day's practice, and I have now papers referred to my committee which the House never saw, which contained information I had sought through the medium of the House, as I had done that, which was to be used when my bill was called up. I will say more, that if I, by any proper act, could have prevented this affair, that I would have done so; nor will I, either in public or in private, refrain from commenting upon the public conduct and opinions of any public man, who may be thought, or may think himself entitled to office. My opposition has always been political, and directed by the ideas I entertain of the power which gentlemen may think themselves entitled to exercise, under the constitution of the United States. I look upon that constitution as containing expressed grants of power, and cannot approve any opposite opinion.

I, as a public man, am willing to be judged by this test, and when I, or others, cannot defend their opinion, in justice to the country, they ought to retire. In my public capacity I called upon the executive branch of the government for papers expressly relating to a national transaction, and for public use; and if evil has resulted, or private letters been divulged, it cannot attach to me.

I am, sirs, with great respect, your obedient servant,

JOHN FLOYD.

III. Mr. Fuller's Letter.

From the Boston Patriot of 4th September, 1822.

BOSTON, 3d SEPTEMBER, 1822.

To the Editors of the Boston Patriot:

Gentlemen: Having seen in the Richmond Enquirer of the 27th of August, a letter from Mr. Floyd, of Virginia, in which he speaks of the conduct of Mr. Adams "in *procuring* Mr. Fuller to make the call" for Mr. Russell's letter and Mr. A.'s remarks in relation to the Ghent treaty, I am induced, with great reluctance, to address you a line on that subject, for publication. My great aversion to appear, without evident necessity, in the newspapers, alone withheld me from this course, on observing that Mr. Russell, in his letter re-published in the National Intelligencer on the 3d of July, says Mr. Adams "sought for a member who would *consent* to make the call."—"To *one* member from Massachusetts, at least, he had applied in vain, before he finally succeeded in his object."

It was perfectly obvious, on being informed by the President's message of the 4th of May, that Mr. Russell's private letter on the Ghent negotiation was to be seen by gentlemen who might call at the Department of State, that it would be immediately published in the newspapers. The message also stated the wish of the Secretary of State, to have the letter communicated to Congress, together with his remarks, explanatory of its contents. This course appeared to me perfectly fair; and in supporting the motion, which I had submitted for the purpose, I assigned, among other reasons, the palpable unfairness of making the *letter public*, while the answer was *suppressed*. Several members, with whom I conversed, concurred with me entirely in the propriety of having both communicated together. It seems to me, therefore, very singular, that any censure could be attached to Mr. Adams, even had he, as alleged, requested or "procured" the call. I do, however, explicitly declare, that *neither Mr. Adams, nor any other person, either requested or "procured" me to move the call, or to do any thing in relation to it.*

I regretted the absence of Mr. Russell, and did not know of his intention to depart from Washington, until he was actually gone; had he been present, however, it did not occur to me, that he could have any objection to the resolution, and it would not have prevented the support I gave it.

Mr. Floyd's remarks, in opposition to the resolution, appear to me more accurately stated in his letter, than as reported in the Intelligencer; but the addition which he has supplied, seems not material, in my view, for his "justification."

Permit me to add, that while I regret extremely the unfortunate occasion, I nevertheless rejoice in perceiving that it has produced a full development of the import and bearings of several important points, which required only to be understood, to allay the jealousies so natural, but I trust so unfounded, between the different sections of our country. Your's respectfully,

T. FULLER.

IV. From the National Intelligencer of 31st August, 1822.

To the Editors of the National Intelligencer.

In the Richmond Enquirer of the 27th August, 1822, there is published a letter from Mr. Floyd to the editors of that paper, in which he says, that in my Rejoinder to Mr. Russell, I boldly and confidently reiterate, that Mr. Russell procured HIM, to subserve his purposes, and make the call in the House, which he did make; which assertion he unequivocally pronounces to be utterly destitute of that verity which ought always to characterize assertions made to the public.

Whoever has read the Rejoinder, thus referred to, must have seen that the name of Mr. Floyd is not so much as mentioned in it. I have invariably spoken in it of the *call of the House of Representatives*, and have mentioned the mover of the Resolution, only to say, that when Mr. Russell left the City, on the fifth of May, I presumed he knew that the call for the letter would not be renewed by him. I have said that the *call of the House* of the 19th of April, was made at Mr. Russell's instance or suggestion, and that it was procured by him. My vouchers for this assertion, are the declarations of Mr. Russell himself to Mr. Brent and Mr. Bailey, as attested in their statements—from the latter of which it appears *how* the call for Mr. Russell's letter was procured by him, namely, that Mr Floyd, before offering the resolution, asked him for a copy of the letter, which Mr. Russell declined giving, telling Mr. Floyd that if he wished a copy, he must move a call for it. Mr. Floyd has not denied this to be fact. If he did deny it, the question would be upon the verity of Mr. Russell's assertion, and not of mine. With the verity which ought always to characterize assertions made to the public, I am as deeply impressed as I could be by the precept of Mr. Floyd, or by his example.

JOHN QUINCY ADAMS.

Washington, 30th August, 1822.

V. Further Remarks upon Mr. Floyd's Letter to the Editors of the Richmond Enquirer.

The *impartial* editors of the Richmond Enquirer, in republishing this letter of mine to the editors of the National Intelligencer, repelling the charge of Mr. Floyd, annexed to it a note of their own, styling the distinction pointed out in my letter between the motion of Mr. Floyd, and the call of the House of Representatives which resulted from it, *a nice distinction.*

The distinction was this: Mr. Floyd had accused me of having, "regardless of feelings or opinions, boldly and confidently reiterated, in my Rejoinder, that Mr. Russell had procured him, (Mr. Floyd,) to subserve his, (Mr. Russell's,) *purposes*, and make the call in the House which he did make." And upon this accusa-

tion, Mr. Floyd had taken ground to charge me with injustice to him, and with having asserted of him that which was not true.

If I had asserted, *personally, of Mr. Floyd*, that which he imputed to me, he would have had reason to take offence at the assertion, and to deny its truth: but the assertion that the call of the House, adopted upon his motion, was procured by Mr. Russell, neither implied that Mr. Floyd had made himself subservient to Mr. Russell's purposes, nor any thing at which Mr. Floyd could justly take offence. The fact which I did assert, namely, that the call for Mr. Russell's letter had been made at his own suggestion, is not denied by Mr. Floyd, and is true. It was only by imputing to me an assertion that I had not made, that Mr. Floyd could make himself ground to stand upon, in charging injustice to him, and untruth upon my assertion.

My assertion was no more saying that Mr. Russell procured *Mr. Floyd* to subserve his purposes, than that he procured the *House of Representatives* to subserve his purposes.

In stating the simple fact, that the call of 19th April, 1822, was moved for at the suggestion of Mr. Russell, I neither meant, nor thought, that Mr. Floyd acted *in subserviency to the purposes* of Mr. Russell. I knew he had purposes of his own. That so far as they were applicable to *me*, those purposes concurred well with those of Mr. Russell, I did believe; but to Mr. Floyd, all that I meant to impute, was, *the wish to obtain the letter*, and that the mode of obtaining it had been suggested to him by Mr. Russell.

Mr. Floyd, sensitive as he is to the idea of a bare intimation that a call of the House, moved for by him, had been *procured* by Mr. Russell, has, nevertheless, not scrupled to say, in direct terms, that I *procured* Mr. Fuller to make the call from which he, Mr. Floyd, had desisted. I do not suppose that by this assertion Mr. Floyd intended any thing offensive to Mr. Fuller; and if he did not, still less reason could he have for taking offence at my asserting, in terms not even personal to himself, nor using his name, that a call moved for by him had been procured by Mr. Russell. He had less cause to use the term, as applicable to Mr. Fuller, than I had, as applicable to *him*. His call of 19th April, had been directly suggested to him by Mr. Russell. After the President's message to the House, of 4th May, declining the communication of the papers, unless they should *renew* their call, it was unknown to me for two days, whether Mr. Floyd would move a renewal of the call, or not. The public curiosity was very highly excited, and many of the members of both Houses of Congress, whom I casually saw in the interval, spoke to me on the subject. I did not conceal from any one of them, my wish that the papers should be communicated to the House; but I did not ask any one of them to renew the call. I gave them all to understand, that if Mr. Floyd should renew the call, I hoped it would by no one be resisted, on any consideration of regard for me. Every one of them must have known, that if Mr. Floyd did not renew the call, I should be glad if it were re-

newed by any other member: but I neither asked Mr. Fuller nor any other member to renew it. I did not, therefore, procure Mr. Fuller, to renew the call and if I can be said to have procured the call, moved for by him, it was only by the expression of a general wish to him, as to many others, that the papers should be communicated to the House; a wish which had already been made known to the House by the message of the President.

Nothing offensive to Mr. Floyd was intended by me in my Rejoinder, nor, if he had been governed by his own maxim, could he have seen any thing offensive to him in it. But there is one thing, at least, in which there is, between Mr. Russell and Mr. Floyd, a *community* of purpose: that of assuming an attitude of *defence*, for the purpose of making an attack upon me.

Mr. Floyd, in the publication here alluded to, has indulged himself in many reflections and insinuations against me, which, having no relation to the subject of this controversy, I deem it most respectful to the public to pass over in silence. I bear no enmity to Mr. Floyd. Having no personal acquaintance with him, I can have no feelings towards him, other than those excited by his conduct as a public man, which is open to my observation as mine is open to his.

There had been a time when, upon a critical occasion, in which my public conduct was not a little involved, Mr. Floyd, still more unknown to me than at present, had in the House of Representatives taken a part which had given him claims to my esteem—perhaps to my gratitude. His conduct and opinions then, were doubtless actuated exclusively by public motives, and without reference at all to me—yet I was grateful to him for his support of a cause which it had also been my duty to defend: the cause of a hero, upon whose public services was invoked the public censure of his country.*

Whatever were his motives for moving the first call for the Ghent papers, or the second, for Mr. Russell's letter, as he thereby only exercised his right as a representative of the people, I could take no exception to it. There were no ties of private friendship between Mr. Floyd and me, which made his case different from that of Mr. Russell; and if he had received his impression of the transactions at Ghent from representations such as those of Mr. Russell's letter, he might, without impropriety, move a call for the papers, for the purpose of bringing the whole subject before Congress, and the nation, and of exposing what he might deem to be my misconduct in the transaction, even though it should have no bearing upon his bill for the occupation of Columbia river.

By his publication in the Richmond Enquirer, he seems desirous of being understood to disclaim any *other* purpose in moving the

* See the Debate in the House of Representatives, on the Seminole War, February, 1819, Mr. Floyd's Speech.

calls, than to obtain information for the support and elucidation of that bill—yet his disclaimer is not explicit.

At the preceding session of Congress, as Chairman of a Committee of the House of Representatives, he had made a report recommending the establishment of a territory at the mouth of Columbia river. He now states, that at that time, in conversation at his lodgings with some of his friends, upon the subject of that report, and upon the value of the fur trade of our western waters, the wealth to be derived from that trade in the Canton market, and the practicability of supplying the valley of the Mississippi with the manufactures of that route, one gentleman observed, that the Mississippi had been discussed at Ghent, and from the characters of the gentlemen engaged in it, there was a strong probability that if Mr. Floyd had that correspondence, he would obtain *something which might be useful to him.* Upon which he immediately determined to make the call, as a proper mode of getting the papers, but afterwards determined to postpone the call until the next session.

Mr. Floyd has not informed the public, *who* it was that made the suggestion to him, upon which he determined to call for the Ghent correspondence; but it was a person who knew that the Mississippi had been discussed at Ghent, and who, by suggesting this idea to Mr. Floyd, sufficiently manifested the disposition that the correspondence containing the discussion of the Mississippi at Ghent, should be brought before the public.

Mr. Floyd's projected bill might be an *occasion* to obtain this object, but where so much was known about the discussion of the Mississippi at Ghent, other purposes, besides the occupation of Columbia river, the fur trade, or the Canton market, were doubtless contemplated in stimulating the call for the correspondence. I do not mean to complain of such motives, if they were partaken by Mr. Floyd: but while influenced by them, he cannot claim the privilege of impartiality, with reference to this inquiry, nor should he have appealed to the public, as if he had been injured by me, for merely stating the fact, that the call of the House for Mr. Russell's letter, had been moved for at the suggestion of Mr. Russell himself. By Mr. Floyd's own showing, his first call for the Ghent papers, had been *suggested* to him. He does not deny that the call for Mr. Russell's letter was *suggested* to him, and he might have added, even, that his coming forward in the Richmond Enquirer, in aid of Mr. Russell, had *been suggested to him* by the editors of that paper.*

The motives now alleged by Mr. Floyd for his call of 17th January, 1822, could not lead him to the suspicion, that there would be any reluctance in the Executive to furnish *all* the documents that could be useful to him for his Columbia river bill; nor does it indeed appear, that on the 16th of January, 1822, when he moved the resolution, he suspected, or had reason to suspect, there would be any difficulty in obtaining *all* the papers upon the call.

* See the Richmond Enquirer of 2d August, 1822.

The case seems to have been different on the next day. Mr. Floyd then proposed to strike out from his resolution, the exception of papers, which, in the opinion of the President, it might be improper to disclose ; and to the demand for the correspondence, had added that for the protocol.

The following observations of Mr. Floyd in this day's debate, [17th January, 1822,] explaining his reasons for wishing for the *whole* correspondence, without excepting even such parts of it as in the President's opinion it might be improper to disclose, are particularly remarkable. He observed "that the bill which he had "this day reported to the House, contemplated a considerable "change in the intercourse with the Indian tribes, in the West ; and "it appeared by the report of the Secretary of War, made yester-"day, *that a great influence was exercised over those tribes by our "European neighbours in that quarter.* The correspondence be-"tween the commissioners at Ghent, embraced this subject among "others, and he thought it was desirable that the House should be "in possession of the whole of it."

Mr. Floyd, in his recent publication, says that when the papers were communicated to the House, in answer to this call, on examining them, *he could not find any thing he wanted ;* but that he expected to find it in the letter of Mr. Russell, promised in his separate despatch of 25th December, 1814. He disclaims any intention, however, of calling for a *private* letter, and says, that if by any proper act he could have prevented *this affair*, he would have done so. Whether he found, in Mr. Russell's letter, when it was communicated, any thing that he wanted, he has not said. There was much touching the value of the Mississippi river, and much about the influence exercised over those Indian tribes, by our European neighbours in that quarter : the bearing of it, or of any part of it, upon Mr. Floyd's bill for the occupation of Columbia river, is not so perceptible as its bearing upon the object which he now seems to disclaim. If he means to be understood to say, that he had *no other* motive in calling for that letter than those that he has assigned in his recent publication, I should only regret that this paper, when obtained, was so little suited to answer his expectations, or to give him the information of which he was in pursuit.

That he had other objects in view, it was certainly very natural to believe, upon observing the earnestness with which he pressed for the *whole* Ghent correspondence, without excepting such part as the President might think it improper to disclose ; and upon comparing his observations in the debate of 17th January, with the contents of Mr. Russell's letter.

His resolution of 19th April, called on the President (if not injurious to the public good) for *any letter or communication*, which *may have been received*, from Jonathan Russell, after the signature of the treaty of Ghent, and written in conformity to the indications contained in his letter of 25th December, 1814. Although in this call, there is neither qualification of the character of the *letter* or

communication, whether *public* or *private*, of the *time* when, nor of the *person by whom*, it might have been received, and by its wording it seemed adapted to obtain precisely such a paper as Mr. Russell did produce, yet, after what has been said by Mr. Floyd, I must infer, that in making this call of 19th April, he did not know that Mr. Russell's letter from Paris was a private letter. But Mr. Russell himself did know it, and had, nevertheless, repeatedly expressed the wish, that it might be communicated to the House under the first call of 17th January. In the interval between the first and second call, he had sent for his own original of it to Mendon—had received it, and was immediately afterwards prepared with his duplicate, not marked private, but delivered by himself at the Department of State as a public letter.

Of Mr. Floyd's anxious wish first, that the *whole* correspondence, and secondly, that this letter of Mr. Russell should come before Congress, there can assuredly be no question. With regard to the correspondence, my wish to gratify him was the more earnest, from the hope, that whatever might be his motive for the call, he would be convinced there was none in the executive for concealment. As to Mr. Russell's letter, before I knew its contents, I wished it might be communicated, for the gratification both of Mr. Russell and Mr. Floyd; and after I knew them, for my own vindication and that of my colleagues of the majority at Ghent, against them.

Mr. Floyd, when he says that I procured Mr. Fuller to make the call (of 7th May,) which he, Mr. Floyd, had desisted from, adds, that it seems this was so desirable to me as a mean of getting into the newspapers.

A biographer of Mr. Fox, charged the physicians who attended him in his last illness, with having hastened his death by administering foxglove. The physicians answered by declaring that they had administered no foxglove to him; upon which the biographer turned upon them with a charge of having caused the patient's death by *omitting* to administer foxglove, a remedy known to be suited for his disease. Thus Mr. Floyd, after moving a call for the Ghent papers, without excepting even such as the President might think it improper to disclose; after moving a second call for *any letter or communication*, unless injurious to the public good, which may have been received from Mr. Russell, on the subject, after manifesting the utmost impatience for the papers, and not sparing the excitement of suspicions that they would be garbled or suppressed; now turns upon me for concurring with him in the wish, that they might *all* be produced, and imputes it all to a desire on my part of *getting into the newspapers*.

It was not into the newspapers, but before the House of Representatives, that the motion of Mr. Fuller was adapted to bring me; and it was at the call of Mr. Floyd, with the concurring will and

agency of Mr. Russell, that I had been summoned there. Under their auspices, I should have been introduced like a convict of the inquisition, with my sentence upon my breast My own wish was to appear with the accusation against me, and my defence for the House to judge upon both. If Mr. Floyd had then reason to desist from his call, I had the more reason for wishing it renewed.

It was Mr. Russell, too, who chose to go into the newspapers, first by publishing his triplicate in Philadelphia, and then his reply, in the Boston Statesman. It was with extreme reluctance that I followed him into that field, and I took the earliest opportunity of withdrawing from it, until called there again by Mr. Floyd.

If Mr. Jefferson himself, the patriarch of the revolution, the immortal author of the Declaration of Independence, in the retirement of private life, in the last stage of his illustrious career, surrounded by the gratitude and veneration of his country, justly thought it not unworthy of himself, to meet twice in the newspapers, the accusations of a nameless "Native of Virginia," because they struck at his honour, I hope it will be imputed to no thirst for newspaper contention, if I, who in comparison with him am but of yesterday, but holding a public trust, for which dishonour is disqualification, have met in the public journals, the concurring and persevering, though variously pretexted and modified, attacks of a native of Massachusetts and a native of Virginia, both supported by their names, both acts of men, honoured themselves with public confidence, and both tending, if not intended, to rob me of that good name, without which to me public trust would be a reproach and existence itself but a burthen.

The perusal of Mr. Russell's duplicate disclosed to me the mystery of ruin which had been brewing against me, from the very day after the signature of the treaty of Ghent. It was by representations like those of that letter, that the minds of my fellow citizens in the West, had for a succession of years been abused and ulcerated against me. That letter, indeed, inculpated the whole majority of the mission at Ghent, but subsidiary slander had performed its part of pointing all the guilt, and fastening all the responsibility of the crime upon me. It was I who had made the proposal, and Mr. Bayard, after assenting to it, had repented. Such were the tales which had been for years in circulation, and which ceased not to be told, until after the publication of Mr. Russell's letters and my remarks. Imputations of motives of the deepest infamy, were connected with these aspersions, conveyed in dark insinuations, and vouched for upon pretended ambiguous givings out of the dead.* Several of the public journals from the first call of Mr. Floyd for the Ghent papers, had caught enough of the oracular and prophetic spirit, to foresee that it would result in my irredeemable disgrace. The House of Representatives had called for Mr. Rus-

* See the Aurora, daily, for the last week in May, and the Richmond Enquirer of 4th June, 1822.

sell's letter: Mr. Russell himself had furnished it, to be reported in answer to the call. Curiosity had been potioned into eagerness for a sight of it, and of that eagerness Mr. Floyd had exhibited no unintelligible share. If his only object was to obtain information *useful to him*, with reference to *the Columbia River Bill*, the indexes to his mind, in the debate of the 17th of January, 1822, had mistaken their direction. If he had another object, it would have been candid to avow it then, and not to disavow it now.

Mr. Floyd says he will take no part in the controversy between Mr. Russell and me. I should have had more reason to thank Mr. Floyd for this profession of impartiality, if it comported better either with the general tenor, or the particular import, of the publication in which it is contained. Mr. Floyd must not be allowed at once to claim the rights of neutrality and to practise acts of enmity. The whole of his publication is full of hostility to me, as inveterate as it was unprovoked: a neutral flag and a raking broadside are but indifferent vouchers for each other. Mr. Floyd now comes forward in this controversy substantially as an auxiliary to Mr. Russell, and as a pretext for it, he charges me with an assertion which I never made, that he may take it as personally offensive to himself, and attack me under a colour of self-defence. I never gave cause of offence to Mr. Floyd, and if in the Ghent papers for his profound researches *touching the value of the Mississippi river*, or the discussion of the Mississippi at Ghent, *he could not find any thing he wanted*, the fault was not mine. It is usual to look for information to places where it is likely to be found. If an astronomer should point his telescope to the moon in search of spots on the face of the sun, it would not be surprising if he could not find any thing that he wanted.

Mr. Floyd declares that he will not either in public or in private refrain from commenting upon the public conduct and opinions of *any public man*, who may be thought or may think himself entitled to office. He adds that his opposition has always been political and directed by the *ideas he entertains* of the power which gentlemen *may think themselves entitled to exercise*, under the constitution of the United States. If, by these general expressions, Mr. Floyd means any special reference to me, I have not the slightest objection to his commenting upon my public conduct and opinions, whether in public or private, while he will confine himself to that exact verity, of which he has so sound a theoretic conception. I am perfectly willing even that he should take his Columbia River Bill as the text for a comment upon the discussion of the Mississippi at Ghent. But if he comments upon the power which *I* may think myself entitled to exercise under the constitution of the United States, from the ideas which *he* entertains of it, I shall only ask the hearers to examine well the coincidence between my thoughts and his ideas on the same subject. He says he looks upon the constitution of the United States as containing expressed grants of power, and cannot approve any opposite opinion. I hold no oppo-

site opinion, and if in his comments, public or private, Mr. Floyd should impute to me that I do, I can only hope that his hearers will judge of my opinions as they are, and not according to the ideas of them entertained by Mr. Floyd.

Mr. Floyd intimates that he shall hold me responsible not only for every thing that I say *of him*, but for every thing that may be said of him by persons in official stations under me. To the first part of this determination I have no objection; but he will excuse me from holding myself responsible to him for what I do not say of him, or for what may be said of him by any other man. The official dependence of the subordinate officers of government, neither in law, justice, or equity disqualifies them for the exercise of the rights, nor absolves them from the responsibility of giving testimony; and the credit due to that testimony, depends not upon official station, but upon individual character. I called upon Mr. Brent and Mr. Bailey for statements of facts, material in the controversy between Mr. Russell and me, and known only to them. They have long held in the Department, offices of great trust and confidence, offices for which no other than men of perfect integrity and unsullied reputation could be qualified. They are not personally known to Mr. Floyd; and I do him the justice to believe, that if they had been, he would have spared some of his reflections. But they are extensively known to others, and wherever known, are respected.

JOHN QUINCY ADAMS.

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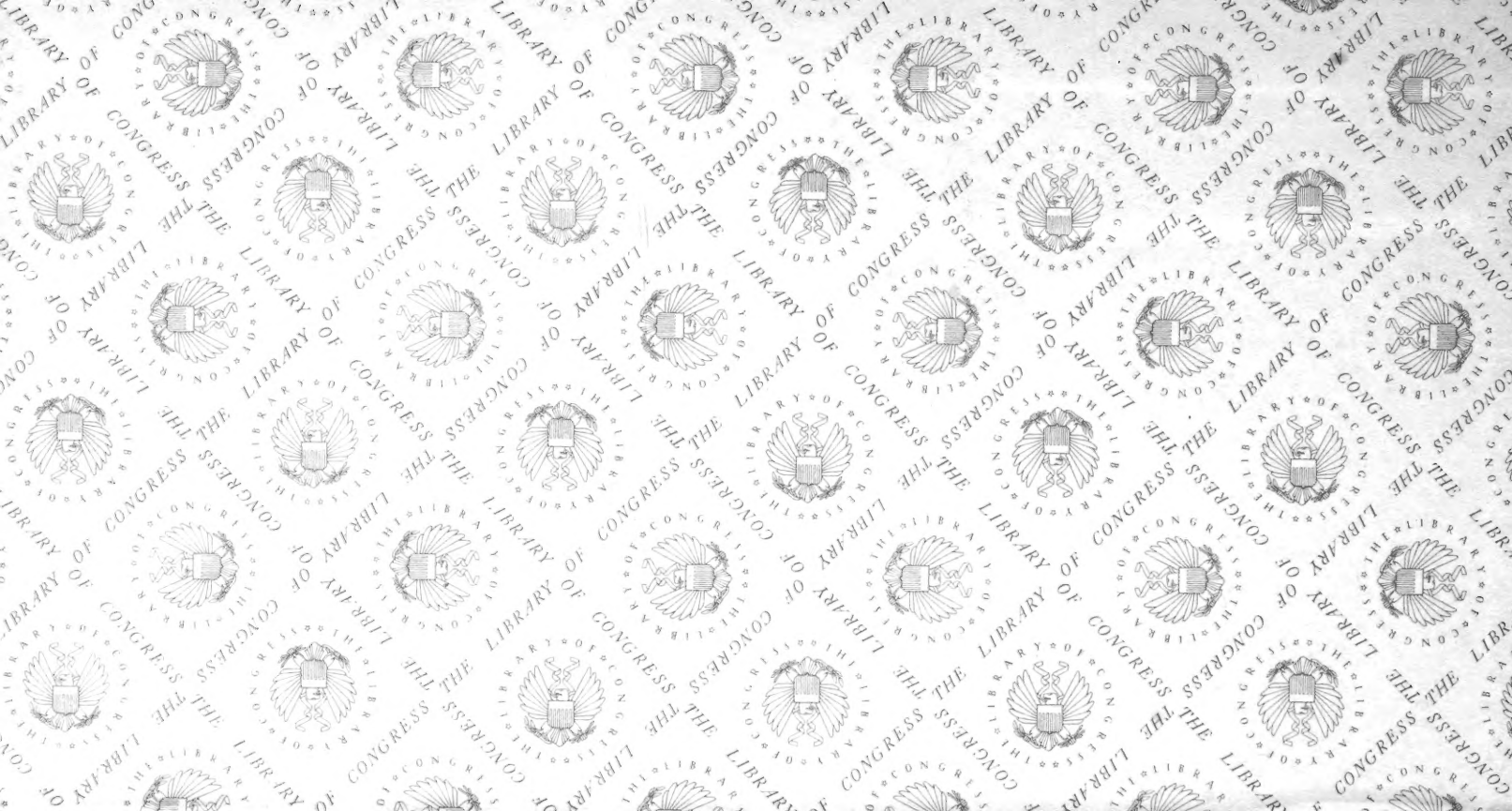
ERRATA.

Page 15, line 5, for "aready," read "already."
18, last line but one, for "boundaries," read "countries."
20, line 24, for "articte," read "article."
24, 25, for "ratification," read "ratifications."
25, 15, for "nogotiations," read "negotiations."
46, 3, from the bottom, for "plenipotiaries," read "plenipotentiaries."
71, 20, towards the end, strike out "the."
71, 29, for "dependant," read "dependent."
77, 6, between "our" and "Instructions," insert "other."
77, 39, for "were," read "was."
78, 32, at the beginning of the line, add "from."
86, last line but one, for "grant to," read "grant or."
87, line 37, before "negotiation," add "of the."
108, 31, for "then," read "than."
117, 24, for "only," read "ably."
121, 3 from the bottom, for "rating," read "cating."
121, 2 from the bottom, for "oity," read "rity."
130, 5, for "conferenee, read "conference."
133, 10 from the bottom, for "proprienty," read "propriety."
147, 21, at the beginning, strike out "in."
152, 12, for "orignal," read "original."
161, 16, for "them," read "it."
200, 6, for "9th," read "8th."
221, 12, for "24th," read "25th."
227, 4, after "opinion," insert "upon."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